

Panaji, 3rd June, 2021 (Jyaistha 13, 1943)

SERIES II No. 10

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 9 dated 27-05-2021 namely, Extraordinary dated 28-05-2021 from pages 165 to 166 regarding Order from Department of Home.

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Co-operative Societies

Order

No. 3/14/Urban Credit/TS II/BZ/2021/RCS/368

- Read: 1. Order No. 48-8-2001-TS-RCS/III/311 dated 21-04-2017.
2. Letter No. BUCC/2158/21 dated 04-03-2021.
3. Letter No. ARCS/BZ/ADT/CIRCULAR/1283 dated 31-03-2021.

Whereas, Adv. Sushma T. Mandrekar alias Sushma Harish Chodankar, H. No. 713/33, Ardhawada, Maem, Bicholim-Goa was appointed as Registrar's Nominee under Section 86(1) of the Goa Co-operative Societies Act, 2001 read with Rule 116(1) of the Goa Co-operative Societies Rules, 2003 vide Order read at Sr. No. 1 above.

And whereas, now a request has been received from The Bordem Urban Co-op. Credit Society Ltd., Bordem, Bicholim-Goa vide their letter read at Sr. No. 2 above to designate Adv. Sushma T. Mandrekar alias Sushma Harish Chodankar, as their dedicated nominee to adjudicate disputes referred by from Adv. Sushma T. Mandrekar alias Sushma Harish Chodankar.

In view of above, the above named nominee Adv. Sushma T. Mandrekar alias Sushma Harish Chodankar, in exercise of powers conferred under Section 123(B) of the Goa Co-op. Societies Act, 2001 read with Rule 116 of the Goa Co-operative Societies Rules, 2003, I, the undersigned hereby authorise the above named nominee to entertain

all disputes referred to him by The Bordem Urban Co-op. Credit Society Ltd., Bordem, Bicholim-Goa without routing it through this department.

When a purported dispute is referred by the society, the above named nominee is authorised to first decide under sub-section (1) of Section 86 of the Goa Co-operative Societies Act whether the matter referred by society involves a dispute and pass appropriate Orders under sub-section (1) of Section 86.

Only upon the nominee satisfying that there exists a dispute, she shall proceed to adjudicate the same and give award accordingly. The Nominee shall abide by the terms and condition on which he was originally appointed as nominee read at Sr. 1 above.

This appointment shall come into force with immediate effect and shall remain in force for one year and same can be withdrawn at any stage without assigning any reason.

Arvind B. Khutkar, Registrar (Co-op. Societies).

Panaji, 21st May, 2021.

Order

No. 4/4/Credit/TS-II/BZ/2018/RCS/364

- Read: 1) Notification No. 3/3/Urban Credit/PZ/2017/RCS/Suppl/5306 dated 10-02-2020.
2) Order No. 4/4/Credit/TS-II/BZ/2018/RCS/197 dated 07-05-2020.
3) Letter No. DNSPM/HO/444/HO/2020-21 dated 19-02-2021 received from the Chairman of Deendayal Nagari Sahakari Pathsaunstha Maryadit, Bicholim-Goa.

In exercise of powers conferred upon me vide Notification read at Sr. No. 1 above, the term of The Chief Executive Officer of Deendayal Nagari Sahakari Pathsaunstha Maryadit, Bicholim-Goa empowered vide Order at Sr. No. 2 to act as

Sale-cum-Recovery Officer as provided under sub-section (1) of Section 91D of the Goa Co-operative Societies Act, 2001, in relation to the recovery of debts and to attach and sell the property of defaulters or to execute any decree by attachment and sale of property and execution of all recovery orders of decree holder viz Deendayal Nagari Sahakari Pathsaunstha Maryadit, Bicholim-Goa passed by the Asstt. Registrar of Co-op. Societies, ABN/EXE, North Goa District, Ponda-Goa or the Nominee of Registrar or such other authority authorized by the Registrar is hereby extended for further period of one year on following conditions.

1. The Officer empowered with the powers of Sales-cum-Recovery Officer shall work under the general guidance, superintendence and control of the Asstt. Registrar of Co-operative Societies, Arbitration/execution, North Goa District, Ponda-Goa.
2. He shall follow all the procedures as laid down under the Goa Co-operative Societies Act, 2001 and the Goa Co-operative Societies Rules, 2003 or in compliance with any other relevant provisions of any other Act/Rules and also bye-laws of the society concerned while execution of decree.
3. The Board of Directors of the society shall be fully responsible along with the Officer empowered with the powers of Sales-cum-Recovery Officer for any acts in contravention of the Act, Rules and Bye-laws.
4. The Board of Directors shall review the performance of the Officer empowered with the powers of Sales-cum-Recovery Officer every month and ensure compliance.
5. The above extension Order shall remain in force for one year from the date of its issue and the same can also be withdrawn at any stage without assigning any reason thereof.

Arvind B. Khutkar, Registrar (Co-op. Societies).

Panaji, 21st May, 2021.

Order

No. 3/1/Urban/TS-II/SZ/2017/RCS/Vol.I/366

- Read: 1) Notification No. 3/3/Urban Credit/TSII/PZ/2017/RCS/Suppl/5306 dated 10-02-2020.
- 2) Letter No. SUCCSL/20-21/333 dated 05-11-2020 of the Sahakar Urban Credit Co-op Society Ltd., Vasco-da-Gama, Goa.
 - 3) Letter No. 29-12/ADT/ARSZ/Recovery/Sales Officer/1584 dated 18-11-2020, of

the Asstt. Registrar of Co-op. Societies, South Zone, Margao.

- 4) O. M. No. 3/1/Urban/TS-II/PZ/2017/RCS/Vol. I/3353 dated 08-01-2021.
- 5) Letter No. 29-14/20/ADT/ARSZ/Recovery/Sales Officer/42 dated 06-04-2021 of the Asstt. Registrar of Co-op. Societies, South Zone, Margao.

In exercise of powers conferred upon me vide Notification read at Sr. No. 1 above, the General Manager of the Sahakar Urban Credit Co-operative Society Ltd., Vasco-da-Gama, Goa is hereby empowered to act as Sale-cum-Recovery Officer as provided under sub-section (1) of Section 91D of the Goa Co-operative Societies Act, 2001, in relation to the recovery of debts and to attach and sell the property of defaulters or to execute any decree by attachment and sale of property and execution of all recovery orders of decree holder viz The Sahakar Urban Credit Co-operative Society Ltd., Vasco-da-Gama, Goa passed by the Assistant Registrar of Co-operative Societies, Arbitration/Execution or the Nominee of Registrar. This appointment is subject to following conditions:-

1. The Officer empowered with the powers of Sales-cum-Recovery Officer shall work under the general guidance, superintendence and control of the Assistant Registrar of Co-operative Societies, Arbitration/Execution, South Goa District, Margao-Goa.
2. He shall follow all the procedures as laid down under the Goa Co-operative Societies Act, 2001 and the Goa Co-operative Societies Rules, 2003 or in compliance with any other relevant provisions of any other Act/Rules and also bye-laws of the society concerned while execution of decree.
3. The Board of Directors of the society shall be fully responsible along with the Chief Executive Officer for any acts in contravention of the Act, Rules and Bye-laws.
4. The Board of Directors shall review the performance of the General Manager every month and ensure compliance.
5. This Order shall remain in force for one year from the date of its issue and the same can also be withdrawn at any stage without assigning any reasons thereof.

Arvind B. Khutkar, Registrar (Co-op. Societies).

Panaji, 17th May, 2021.

Department of Education, Art & Culture

Directorate of Art & Culture

Order

No. DAC/7/IMB/Partfile/2020-21/554

In continuation to the Order No. DAC/7/IMB/Partfile/2020-21/3663 dated 02-03-2021, the Government is pleased to extend the service of Shri Digamber Atmaram Kankonkar, Classic Apts., E-66/1, Katye Bhat, Ella Old Goa, Tiswadi-Goa, as Member Secretary of Institute Menezes Braganza, Panaji-Goa for one year from 03-02-2021 to 02-02-2022.

This issue with the approval of the Government vide No. 3482 dated 21-04-2021.

By order and in the name of the Governor of Goa.

Sagun R. Velip, Director & ex officio Jt. Secretary (Art & Culture).

Panaji, 25th May, 2021.

Goa Housing Board

Order

GHB/ADM/205/2021

In exercise of the powers conferred by regulation 3 of the Goa Housing Board (Appointment and functions of Technical Committee) Regulations, 2012, the Goa Housing Board, with the prior approval of the Government conveyed vide letter No. 2/3/2015/HSG/55 dated 01-06-2021, hereby re-constitutes the Technical Committee consisting of the following members, namely:—

1. Chairman of the Goa Housing Board — Chairman.
2. Secretary-cum-Managing Director of Goa Housing Board — Member.
3. Superintendent Engineer, Circle Officer-II, Public Works Department, North Goa District — Member.
4. Shri Umesh Balkrishna Shirodkar, Architect — Member
5. Shri Sanjay Sawant, Architect — Member.
6. Housing Engineer, Goa Housing Board — Member Secretary.

This order shall be deemed to have come into effect from the date of Government approval i.e. w.e.f. 01-06-2021.

Nikhil Desai, Managing Director (Goa Housing Board).

Porvorim, 2nd June, 2021.

V. No. AP-113/2021.

Department of Labour

Order

No. 28/16/2021-LAB/237

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. HQ, Palette Hotels (I) Private Limited, Swantantra Path, P.O. Box 31, Vasco-da-Gama, Goa and it's workmen, represented by the Goa Trade and Commercial Workers Union, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa constituted under Section 7A of the said Act..

SCHEDULE

- "(1) Whether the severance of employer/employee relationship between the management of M/s. HQ, Palette Hotels (I) Private Limited, Swantantra Path, P.O. Box 31, Vasco-da-Gama, Goa and it's workmen, namely, Ms. Kshama G. Chodankar, Accountant, Shri Kalpesh Shet Vernekar, Commi-I and Shri Kalidas Mayekar, Supervisor in Housekeeping Department, represented by the Goa Trade and Commercial Workers Union is on account of termination of their services or as a result of voluntary action on part of the workmen?
- (2) Based on issue No. (1) above are the workmen entitled to any relief?"

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 20th May, 2021.

Order

No. 28/15/2021-LAB/239

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Herald Publications Private Limited, Campal Trade Centre, Panaji, Goa and it's

workperson, Ms. Andrea Fernandes, Correspondent, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Labour Court-II of Goa at Panaji-Goa, constituted under Section 7(1) of the said Act.

SCHEDULE

- "(1) Whether, Ms. Andrea Fernandes, Correspondent, could be construed as "Workman" as defined under the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?
- (2) If answer to issue No. (1) above, is in affirmative, then, whether the action of the management of M/s. Herald Publications Private Limited, Campal Trade Centre, Panaji, Goa, in terminating the services of Ms. Andrea Fernandes, with effect from 22-11-2019 is legal and justified?
- (3) If answer to issue No. (2) above is negative, which relief the workperson is entitled to?"

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 20th May, 2021.

Order

No. 28/11/2021-LAB/243

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Tevapharm India Private Limited, Plot A-1, Phase 1-A, Verna Industrial Estate, Verna, Goa, and its workmen represented by The Bhartiya Kamgar Sena, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now therefore, in exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said

Act"), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa constituted under Section 7 A of the said Act.

SCHEDULE

- "(A) (1) Whether the transfer of S/Shri Yosobanta Maharane and Yogesh Pednekar from packaging section to production section by the management of M/s. Tevapharm India Private Limited, Plot A-1, Phase 1-A, Verna Industrial Estate, Verna-Goa, amounts to change in service conditions?
- (2) If answer to above is in affirmative, then, to what relief the workmen are entitled?"
- "(B) (1) Whether the action of the management of M/s. Tevapharm India Private Limited, Plot A-1, Phase 1-A, Verna Industrial Estate, Verna-Goa, in deducting earned wages of the workmen S/Shri Yosobanta Maharane and Yogesh Pednekar as mentioned in the Annexure hereto, is legal and justified?
- (2) If answer to issue No. (B) (1) above is in negative, then to what relief the workmen are entitled?"

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 24th May, 2021.

ANNEXURE

Sr. No.	Name of the workmen	Designation	Wage period	Amount deducted
(1)	Shri Yosobanta Maharane	Operator	3 days for the month of August, 2019 6 days for the month of September, 2019	Rs. 3,975/- Rs. 7,950/-
(2)	Shri Yogesh Pednekar	Operator	3 days for the month of August, 2019 6 days for the month of September, 2019	Rs. 3,287/- Rs. 6,794/-

Notification

No. 28/2/2021-LAB/230

The following Award passed by the Labour Court-II, at Panaji-Goa on 26-04-2021 in Case No. LC-II/R-IT/04/2021, is hereby published as

required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 11th May, 2021.

THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before **Shri Suresh N. Narulkar**, Hon'ble
Presiding Officer)

Case No. LC-II/R-IT/04/2021

Shri Damodar Mangueshkar,
represented by Cidade-de-Goa Hotel
Employment Union,
Vanguinim Beach
Dona Paula-Goa ... Workman/Party I
V/s

1. M/s. Cidade de Goa
Vanguinim Beach,
Dona Paula-Goa ... Employer/Party II (1)

2. M/s. Fomento Resorts
Pvt. Ltd.
Vanguinim Beach,
Dona Paula-Goa ... Employer/Party II (2)
Party I/Workman represented by Adv. Shri S.
Gaonkar.

Party II/Employer - Represented by Adv. Shri G. K.
Sardessai.

Panaji, Dated: 26-04-2021.

AWARD

1. In Exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 23-01-2007 bearing No. 28/15/2006-LAB/75 referred the following dispute for adjudication to Labour Court II of Goa at Panaji, Goa.

(1) *"Whether the action of the Management of M/s Cidade de Goa, Unit of M/s Fomento Resorts & Hotels Limited, Dona Paula, Goa, in deducting a sum of Rs. 2000/- per month from the earned wages of Shri Damodar Mangueshkar, Employee No. 1173, with effect from May, 2005, is legal and justified?"*

(2) *If not, to what relief the Workman is entitled?*

2. On receipt of the reference, a case was registered under No. IT/92/07 and registered A/D

notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. This Hon'ble Court adjudicated the reference and passed an award dated 26-05-2010 after hearing both parties. The Workman challenged the said award before the Hon'ble High Court of Bombay at Goa and it bears Writ Petition No. 804/2010. The Hon'ble High Court of Bombay at Goa bench, disposed off the said petition filed by the Workman, vide its judgment dated 05-02-2020 and remanded back the reference and directed to disposed off the said reference as expeditiously as possible and in any case within three months from the date of filing of the authenticated copy of the said judgment and order.

3. The Party-I (for short 'Workman'), filed his Statement of Claim on 11-12-2007 at Exhibit-3. The facts of the case in brief as pleaded by the Workman are that the Employer/Party-II (for short "Employer") is a Hotel Industry. He stated that he was initially employed as 'Clerk' by Hotel Cidade-de-Goa, a unit of Party-II(2) w. e. f. 10-11-1984. He stated that his services were confirmed, vide letter dated 10-11-1985. He stated that since his joining, he was doing the work of clerks, though he was designated as 'Accounts Supervisor'. He stated that the work was assigned to him daily by his superior and as per his instructions, he was doing the work. He stated that he was not the sanctioning authority of any leave of any of the workmen working in his Department. He stated that since the commencement of the hotel, he was continuously working in the hotel without any break in service.

4. He stated that he was issued a show cause notice dated 25-04-2005 stating that a financial loss of Rs. 39,508/- was caused due to him. He stated that he had submitted his reply to the aforesaid show cause notice, vide his reply dated 27-04-2005 and stated that he has carried out his work as per the guidelines and directions from the superiors. He stated that in his aforesaid reply dated 27-04-2005, he has given the details about the procedure followed by the Hotel. He stated that as per the instructions, the Management set the plan of billing and accordingly the billing was done. He stated that inspite of a proper reply, the Employer commenced illegal deductions from his wages w. e. f. May 2005, since he is an office bearer of the Union. He stated that he made another representation through his Union vide Union's letter dated 27-07-2005 against the said illegal deduction. He stated that no reply was received from the Management about the illegal deductions and failed to refund the illegally deducted amount from his earned wages. He stated that the Union had no option left, but to

raise the dispute before the appropriate authority on behalf of the Workman. He stated that the Union accordingly, raised a dispute of illegal deductions before the Asstt. Labour Commissioner, Panaji vide its letter dated 08-08-2005, which ended in failure.

5. The Workman submitted that the Employer failed to conduct a proper enquiry by giving him an opportunity to explain his side before deducting an amount from his earned wages. He submitted that the said action of the Employer violates the principles of natural justice. He submitted that he spoke to the guest, Mrs. Kiran Gajree and she has agreed to make the payment, provided the Employer sent her the pending unpaid bills officially if there is any shortfall in payment. He submitted that he had informed the aforesaid fact to Mr. Rahul Joshi, the Front Office Manager of the Employer's hotel. He submitted that he was telephonically informed by the said guest that she had spoken to the management that they have not submitted any bill. He submitted that the short payment or non-collection of payment was due to the system fault as the same was not shown in the computer system nor there were any written instructions to him to collect the same. He submitted that as he is an office bearer of the union, the false charges were framed against him only to victimize him. He submitted that though it is the responsibility of the night auditors to correct an error and bring to the notice of concerned workman, no action was initiated against any other person. He submitted that because of his union activity, he was singled out and illegal deductions were made from his earned wages. He submitted that before deductions, the Employer failed to follow the provisions of law and hence the deductions of Rs. 2000/- wages per month from his earned wages from the month of May, 2005 is illegal, unjustified and bad-in-law and hence the same is ought to be refunded to him. He submitted that he is entitled to refund the said amount illegally deducted from his earned wages. He therefore prayed that this Hon'ble Court be declared that the deductions made from his earned wages from the month of May, 2005 be declared as illegal, improper and unjustified and direct the Employer to refund the same amount illegally deducted from his earned wages along with an interest of 18% and damages.

6. The Employer filed its Written Statement on 28-12-2007 at Exhibit-5. The Employer, by way of its preliminary objections, submitted that the Party-I is not a "workman" within the meaning of Section 2(s) of the Industrial Dispute Act, 1947 as he was employed mainly in managerial and/or administrative and/or supervisory capacity, drawing wages exceeding 1,600/- per month and/or by nature

of duties attached to him and/or by reason of the powers vested in him, his functions were of supervisory nature, that the Party-I was not performing any manual, skilled, unskilled, technical, operational or clerical work and as such the reference is illegal, bad in law, null and void and not maintainable, that there is/was no 'industrial dispute' exists within the meaning of Section 2 (k) of the I. D. Act, 1947 as on the date of making reference by the Government.

7. Without prejudice to the foregoing submissions, the Employer stated that it is a Company incorporated under the Companies Act, 1956 on 13-10-1981 and owns a Hotel establishment known as "Cidade de Goa" a beach resort situated at Vaguinim Beach, Dona Paula-Goa. The Employer stated that the said hotel establishment is having 210 well-appointed air-conditioned rooms, restaurants, Bars, club saude, banqueting facilities, shopping arcades, etc. which said properties and assets of the Company are maintained and looked in after by the Company's department known as 'Estate'. The Employer stated that it employs large number of employees and consisting of various departments, such as House-Keeping, Food Beverages, Accounts, Engineering, Front Office, Security, Stewarding and Personnel headed by competent managerial and supervisory personnel known as Heads of Departments, etc. The Employer stated that the workman was initially appointed as 'Trainee Restaurant Cashier' in the F & B (General) Department of the Company. Thereafter, he was confirmed in the said post of Restaurant Cashier on 10-11-1985. The Employer stated that the Party-I was promoted as 'Front Office Assistant/Cashier' in the Front Office Department w. e. f. 01-04-1991, under letter dated 01-04-1991. The Employer stated that again, the Party I was appointed/promoted as a 'Front Office Supervisor' in Grade-VIII w. e. f. 01-10-2003, under letter dated 01-10-2003. The Employer stated that the said appointment/promotion was in a supervisory/administrative category/post and on a probationary basis. The Employer stated that the details of responsibilities/duties as a Front Office Supervisor were as specified in the Annexure to the letter dated 01-10-2003. The Employer stated that the Workman was confirmed w. e. f. 01-10-2004 to the said supervisory/administrative post of 'Front Office Supervisor' under letter dated 01-10-2004. The Employer stated that the Workman was thereafter transferred and posted for work as 'Accounts Supervisor' in the General Stores Section of the Accounts Department w. e. f. 01-09-2005 under letter dated 01-09-2005 and on a trainee for a period of six months which was extended for a further period of six months w. e. f. 01-03-2006 under letter dated 01-03-2006.

8. The Employer stated that during the course of working as 'Front Office Supervisor' as above it was found that the Party-I had caused a financial loss of Rs. 39,508/- to them. The Employer stated that therefore, the Party-I was issued a show cause notice dated 25-04-2005 by which he was required to show cause as to why the aforesaid amount of Rs. 39,508/- should not be recovered by deduction from his monthly salary. The Employer stated that the said Show Cause notice was served upon the Party-I on the same day i.e. 24-05-2005. The Employer stated that the Party-I replied to the Show Cause Notice, vide his reply dated 27-04-2005. The Employer stated that since the reply submitted by the Party-I was found to be factually incorrect, they rejected the same. The Employer stated that they informed the said fact to the Party-I, vide their letter dated 03-05-2005. The Employer stated that they also informed the Party-I about their decision to recover the said sum of Rs. 39,508/- from his monthly salary commencing from May, 2005 @ Rs. 2000/- per month till the recovery of the entire amount. The Employer stated that thereafter, the services of the Party-I, were terminated vide their order dated 28-11-2006 w. e. f. 01-12-2006 and accordingly no further deductions were made. The Employer denied the overall case of the Party - I as pleaded in his statement of claim and prayed for rejection of the present reference by holding that the Party-I is not entitled for any relief.

9. Thereafter, the Workman filed his Re-joinder on 11-01-2008 at Exhibit-6. The Workman, by way of his re-joinder, denied each and every statement, averments and submissions made by the Employer, vide their Written Statement filed in the present proceedings and reiterates and confirms the statements, averments and submissions made by him in his statement of claim. The Workman stated that it is the settled law that mere designation of an employee is not a criteria to determine as to whether an employee is a Workman or not. He stated that neither he was having any supervisory powers, nor he can sanction leave or to recommend the promotion, increment or to take any disciplinary action against any Workman. He stated that because he is a "Workman", he was recognized as an Office bearer of the Union by the Employer and he was given the benefits of the settlement signed under the provisions of the I. D. Act, 1947 by the Employer.

10. Based on the pleadings filed by the respective Parties, the Presiding Officer of Hon'ble Industrial Tribunal cum Labour Court framed the following issues on 07-02-2008 at Exb.7.

1. Whether the Party-I proves that he is a "Workman" within the meaning of Section 2 (s) of the Industrial Dispute Act, 1947.

2. Whether the Party-I proves that the short payment/non collection was due to the system failure?
3. Whether the Party-I proves that being office bearer the false charge of causing financial loss of Rs. 39,508/- to the Company was framed to victimized him?
4. Whether the Party-I proves that the action of the Party II in deducting Rs. 2000/- from his earned wages from May, 2005 is illegal and unjustified and bad-in-law?
5. Whether the Party-II proves that the Party-I was primarily and substantially performing the duties of managerial, administrative and supervisory nature?
6. Whether the Party-II proves that the Party-I had caused financial loss of Rs. 39,508/- to the company?
7. Whether the Party-II proves that the reference is illegal, bad-in-law, null and void?

11. My Findings to the aforesaid issues are as under:

- | | |
|-----------------|---------------------|
| (a) Issue No. 1 | In the affirmative. |
| (b) Issue No. 2 | In the negative. |
| (c) Issue No. 3 | In the negative. |
| (d) Issue No. 4 | In the affirmative. |
| (e) Issue No. 5 | In the negative. |
| (f) Issue No. 6 | In the negative. |
| (g) Issue No. 7 | In the negative. |

I have heard the oral arguments of Ld. Adv. Ms. Fatima Dias h/f Adv. Shri. S. Gaonkar, appearing for the Workman as well as Ld. Adv. Shri. G.K. Sardesai, appearing for the Employer. I have carefully perused the entire records of the present case including the synopsis of written arguments filed by the respective parties as well as the judgment of Hon'ble High Court of Bombay at Goa, disposing off its writ petition No. 804/2010. I have also carefully considered the submissions advanced before me.

REASONS:

Issue No. 1 and 5:

12. Vide its judgment dated 05-02-2021, the Hon'ble High Court of Bombay at Goa bench held that the Employer has failed to prove that the Party I was primarily and substantially performing duties of managerial, administrative, supervisory in nature and further held that the Party I is a 'workman' within the meaning of section 2 (s) I.D. Act, 1947. The issue No. 1 is therefore answered in the affirmative and issue No. 5 is answered in the negative.

Issue No. 2:

The burden was casted on the Workman to prove the said issue No. 2. To prove his case, the Workman examined himself and produced on record certain documentary evidence in support of his oral evidence. On the contrary, the Employer examined Smt. Zarine Lobo, its Human Resources-Executive.

13. The evidence of the Workman on record indicates that he was issued a show-cause notice dated 25-04-2005 stating that the Workman has caused financial loss of Rs. 39508/- to the Employer. He replied to the said show-cause notice, vide his letter dated 27-04-2005, stating that he has carried out his duty as per the guidelines and directions from his superior and that he had given details about the procedure followed by the hotel. As per the instructions, the management set the plan of billing and as per the said plan, the billing was done. The reply of the Workman on record at Exb. W/2 indicates that the short payment or non-collection of payment was due to the system fault as the same was not shown in the computer system nor there any written instructions to him to collect the same. As the Employer denied the aforesaid pleadings as well as oral evidence of the Workman, it was incumbent upon the Workman to prove the said fact of short payment or non-collection of the payment was due to the system fault as the same was not shown on the computer system, by cogent evidence. The Workman has however failed to prove the said fact that the short payment or non-collection of the payment was due to system fault by examining any other witness or producing any document to that effect. It is therefore held that the Workman failed to prove that the short payment or non-collection of payment was due to the system failure. The issue No. 2 is therefore answered in the negative.

Issue No. 3, 4 and 6:

I am deciding the issue No. 3, 4 and 6 simultaneously as all the said issue No. 3, 4 and 6 are co-related to each other.

14. Undisputedly, the Workman was issued a show-cause notice dated 25-04-2005 (Exb.E/1) by alleging that during the course of performance of his duty, they have incurred an aggregate financial loss of Rs. 39,508/-. In one case, on account of non-presentation of bill of guest, Mr. Sven Kretschmer to Mr. Andrea List, who was to pay for the same, and consequent non-recovery of Rs.17640/- and another case of short collection of Rs. 21868/- with respect to the guest Mrs. Kiran Gajree, who stayed in the hotel from 26-02-2005 to 05-03-2005. By the said show-cause notice, the Workman was

directed to show-cause and explain in writing why the above said amount should not be recovered from him by deduction from his monthly salary and also punished for negligence in performance of his duty.

15. The Workman replied to the said show-cause notice, vide his letter dated 27-04-2005 (Exb. W/2), stating that he has carried out his duty as per the guidelines and directions from his superior and that he had given details about the procedure followed by the hotel. As per the instructions, the management set the plan of billing and as per the said plan, the billing was done. The reply of the Workman on record indicates that the short payment or non-collection of payment was due to the system fault as the same was not shown in the computer system nor there were any written instructions to him to collect the same. The Employer, vide its letter dated 03-05-2005 (Exb. E/3-colly) informed the Workman that in case of Mr. Sven Kretschmer, there were clear cut instructions in writing in log book to the effect that Mr. Sven Kretschmer's bill amount needs to be collected which was not done and in case of Mrs. Kiran Gajree, his contention that because of extension of 45 minutes in his shift resulted in the loss of Rs. 21,868/- cannot be believed and that an aggregate financial loss of Rs. 39,508/- as set out in the show-cause notice is directly attributable to his gross negligence and carelessness. The Workman was further informed that they have decided to recover the said loss of Rs. 39,508/- from his monthly salary commencing from May, 2005, @ Rs. 2000/- per month till recovery of the entire amount.

16. The Workman, in his oral evidence, deposed that no enquiry was conducted before the said deduction of an amount of Rs. 2000/- from his salary. When the Workman spoke to the guest, Mrs. Kiran Gajree, she had agreed that she would make the payment, provided that the management officially sends pending unpaid bills to her, if any short payment is made. Accordingly, the Workman had informed Mr. Rahul Joshi, Front Office Manager of the Employer. The said guest informed the Workman on telephone that he had spoken to the management and the management will not submit any bill. As the Workman is the office bearer of the union, a false charge was framed to victimize him. He was cross-examined by the Ld. Advocate appearing for the Employer. However, his testimony remained unshaken.

17. On the contrary, the Employer examined its Human Resources-Executive in the Personnel Department, namely Mrs. Zarine Lobo as their sole witness. In her cross-examination, the said witness of the Employer deposed that neither she worked in

the Front office nor aware about the procedure of work to be followed in the front office of the Employer. She admitted that whenever the customer approaches the hotel of the Employer, he has to follow certain conditions laid down by the Employer and that if the customer has unpaid or paid any less amount of the tendered bill, in that event the management has right to recover the same from the said customers. The Employer is also maintaining the detailed address of the customers. She admitted that the Employer has employed night auditors to check the correctness of the bill and the other details and that it is only after certifying the bills by the said night auditors, the bills are paid by the respective customers. She admitted that the bills, which are referred in para 5 of her affidavit in evidence were checked and certified by the night auditors appointed by the Employer. The said witness further admits that besides the Workman, no other employee was issued any show-cause notice or made any deduction by the Employer. She admitted that the Workman had informed the management that short payment or non-collection of payment was due to system fault and that the Employer has not conducted any enquiry to find out, if the said short payment or non-collection of payment was on account of system failure. She is not aware, if the letter of the Workman dated 09-03-2005 at Exb. E/2 was obtained from him forcefully by stating that the said matter will be closed and no further action will be taken against him by Mr. Javed Afridi, the Personnel Manager of the Employer. He deposed that the Employer is having a written document to substantiate her statement that the written orders / instructions were given to the Workman to issue a proper bill to the guest, Mr. Sven Kretschmer. However, after she directing to produce the same and verifying the records, she deposed that no such document is available with the Employer. She admitted that no guest of the hotel can checkout, unless he pays his bills and that it is the practice of the Employer that unless and until the bill of the guest are being paid by the said guest or anybody else, the said guest will not be allowed to checkout from the hotel. She admitted that when the said guest, Mr. Sven Kretschmer had checked out, the Workman was not on his duty and that she is not aware, if the Employer had written any letter to the said guest, Mr. Sven Kretschmer that his bill is still outstanding. Thus, it appears from the cross-examination of the sole witness of the Employer, her testimony has been shaken.

18. The Employer has produced on record a letter of the Workman dated 09-03-2005 (Exb. E/2). The said letter at Exb. E/2 on record indicates that the Workman assured the Employer not to repeat mistake and inconvenience caused due to short collection from Mrs. K. Gajree. Ld. Adv. Shri. G.K. Sardessai, representing the Employer, during the course of his arguments submitted that by the said letter at Exb. E/2, the Workman has admitted his mistake and as such no enquiry is necessary. As the Employer has not referred the said letter of the Workman at Exb. E/2 in its letter dated 03-05-2005 (Exb. E/3-colly) in arriving at a conclusion about the alleged gross negligence and carelessness of the Workman but referred the reply of the Workman at Exb. W/2 and that the sole witness of the Employer, Mrs. Zarine Lobo, in her cross-examination, deposed that she is not aware if Mr. Javed Afridi, the Personnel Manager of the Employer has obtained the said letter from the Workman forcefully by stating that the said matter would be closed and no further action would be taken against him. In view of above, I am not giving any weightage to the said letter of the Workman dated 09-03-2005 at Exb. E/2.

19. The Workman, vide his letter dated 20-05-2005 (Exb. W/3) addressed to the Employer denied the allegations levelled against him and requested not to deduct an amount of Rs. 2000/- per month as the guests are willing to pay short fall amount, the Employer can recover the said amount from the guests or authorize him to recover the said amount from the guests. By his another letter dated 24-06-2005 (Exb. W/4), addressed to the Employer, he denied the charges and requested the Employer to collect the amount from the guests and refund his salary deduction from the month of May, 2005. Since, the Employer failed to investigate the said fact of short payment or non-collection of payment was due to system fault as alleged by the Workman nor produced on record any cogent evidence to show that the financial loss of amount of Rs. 39,508/- caused to them was on account of negligence in performance of duties of the Workman especially when the customers are willing to pay the short fall, if any. Hence, it is held that the Employer failed to prove that the Workman has caused financial loss of Rs. 39,508/- to them. The issue No. 6 is therefore answered in the negative.

20. Ld. Adv. Shri. S. Gaonkar, representing the Workman in his synopsis of written arguments submitted that no penal action can be made against an employee without conducting an domestic enquiry and relied upon the following judgments:

21. In the case of **Rasiklal Vaghajibhai Patel v/s. Ahmedabad Municipal Corporation and Anr.**, reported in (1985) 2 SCC 35, the Hon'ble Supreme Court held as under:

"Unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconducts. Removal or dismissal from service on account of the misconduct constitutes penalty in law. The workman sought to be charged for misconduct must have adequate advance notice of what action or what conduct would constitute misconduct. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is therefore, not possible to accept the view that even if snpressio very and snggestio falsi does not fall in any of the enumerated misconducts, yet for the purpose of service regulation, it would nonetheless be a misconduct punishable as such".

22. In the case of **Manish Kumar v/s. The State of Bihar and Ors.**, Civil Writ Jurisdiction case No.15391 of 2018, the Hon'ble High Court of Patna in para 11 of its judgment observed as under:

"14. In any view of the matter, if an employee is being subjected to a penalty having serious monetary consequences, it would be only fair to make him know that the proposed punishment is of deduction of 10 percent of salary for indefinite period/entire period of contractual service. The petitioners also should have been made known their fault. This is no way of imposing punishment on an employee as such orders come as a bolt from the blue and cannot be countenanced. The manner in which the order has been couched reflects a cavalier approach. Even if an employee is a contractual employee, the relationship of master and servant is established during the tenure of the service and his right to know the ground on which he is being punished financially cannot be taken away. The Director, State Education Project has not taken care to even state in the order as to what was found against the petitioners for justifying the order of deduction of 10 per cent of salary for an indefinite period."

23. In the case of **The State of Punjab v/s. Surinder Singh**, reported in 2016 SCC OnLine P & H 16391,

the Hon'ble Supreme Court in para 5 of its judgment has observed as under:

"5. In so far as challenge to orders dated 14-01-1982, 20-10-1983 and 28-08-1984 is concerned it is barred by limitation. The workman slept over the matter. Thus, on the ground of delay and laches respondent's claim is to be rejected. In so far as order dated 30-09-1987 is concerned workman has been punished by imposing the penalty of stoppage of increment without cumulative effect is without holding any enquiry. Even if the disciplinary authority intends to impose minor penalty having regard to the serious allegation or charge, the enquiry cannot be by passed or the disciplinary authority cannot sidetrack the disciplinary proceedings. Ultimately, imposition of penalty of stoppage of increment without cumulative effect would be civil consequences there would be financial implications. Therefore, without hearing the workman and proving the charge against him in a domestic enquiry the disciplinary authority cannot impose the penalty".

Thus, it is well established principles of law that no penal action can be made against the employee without conducting a domestic enquiry.

24. In the case in hand, the aforesaid evidence on record clearly indicates that the action of the Employer in deducting a sum of Rs. 39,508/- from the earned wages of the Workman from May, 2005 @Rs.2000/- per month without conducting an enquiry. The said action of the Employer is in violation of the principles of natural justice and as such it is illegal, unjustified and bad-in-law. Hence, it is held that Workman proved that the action of the Employer in deducting a sum of Rs. 2000/- from his earned wages from May, 2005 is illegal and unjustified. The issue No. 4 is therefore, answered in the affirmative.

25. The evidence on record indicates that the managing committee of the union had signed two memorandum of settlements u/s 18 (1) r/w 2 (p) of the I.D. Act, one dated 01-05-2001 and another dated 23-12-2004 with the management of the Employer before the Commissioner, Labour and Employment and the Workman was one of the signatory to the said settlement. The evidence on record indicates that the Workman was elected as a Treasurer of the Cidade-de-Goa Hotel Employees Union by the members of the said Union and the Union had informed the management vide union letter dated 01-07-2005.

26. Thus, it is proved that the Workman was an office bearer of the union. However, there is nothing on record about the relations of the Workman with his other colleague, superior officers of the Employer etc. In the absence of the said records, it cannot be said that the action of the Employer in deducting Rs. 2000/- per month from his earned wages is only to victimize him as he was an office bearer of the union. Hence, it is held that the Workman failed to prove that being an office bearer, a false charge of causing financial loss of Rs. 39,508/- to the Employer was framed to victimize him. The issue No. 3 is therefore answered in the negative.

27. While deciding the issue No. 4 hereinabove, I have discussed and come to the conclusion that the action of the Employer in deducting a sum of Rs. 2000/- per month from the earned wages of the Workman w.e.f. May, 2005 is illegal and unjustified.

Neither the Workman nor the Employer has pleaded or stated on oath as to how much amount was deducted from the earned wages of the Workman. However, the Workman has relied upon his four salary slips from May, 2005 to August, 2005 (Exb.W/8-colly). The said salary slips on record indicates that the total amount of Rs. 8000/- was deducted from the earned wages of the Workman (May, 2005 to August, 2005). The Employer is therefore directed to refund the said amount of Rs. 8000/- or if any other excessive amount deducted from the earned wages of the Workman along with simple interest @10% p.a. from the date of its deduction.

Issue No. 7:

28. The Employer contended that the present reference issued by the Government of Goa is illegal, bad-in-law, null and void and not maintainable as the Party-I is not a "workman" within the meaning of Section 2 (s) of the I.D. Act, 1947 and that he was employed in the managerial and/or administrative and/or supervisory capacity drawing wages exceeding Rs.1600/- per month and/or by virtue of duties attached to him and/or by reasons of the powers vested in him, his functions were supervisory in nature. The aforesaid contention of the Employer Company has been denied by the Party I. It is therefore incumbent upon the Employer Company to prove their aforesaid contention by leading material evidence.

29. While discussing the issue No. 1, the Hon'ble High Court of Bombay at Goa concluded that the Party I is a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947.

The term 'industrial dispute' has been defined u/s 2 (k) of the I.D. Act, 1947 and it means "any dispute

or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person." In the case in hand, the Party I proved that he is a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947 and the dispute raised by him against the Employer on the terms of employment is an 'industrial dispute' as defined u/s Section 2 (k) of the I.D. Act, 1947 and hence, this court has every jurisdiction to decide the present reference. Hence, it is held that the Employer failed to prove that the present order of reference issued by the Government of Goa is bad-in-law and not maintainable.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of the Management of M/s Cidade de Goa, Unit of M/s Fomento Resorts & Hotels Limited, Dona Paula, Goa, in deducting a sum of Rs. 2000/- per month from the earned wages of Shri Damodar Mangueshkar, Employee No. 1173, with effect from May, 2005, is illegal and unjustified.
2. It is further held that the Employer, M/s Cidade de Goa, Unit of M/s Fomento Resorts & Hotels Limited, Dona Paula, Goa, is hereby directed to pay an amount of Rs. 8000/- or if any other excessive amount deducted from the earned wages of the Workman along with simple interest @10% p.a. from the date of its deduction.
3. No Order as to Cost.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar)
Presiding Officer
Labour Court-II.

Notification

No. 28/2/2021-LAB/208

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 12-04-2021 in Appl. No. 01/2014 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).
Porvorim, 27th April, 2021.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURTGOVERNMENT OF GOA
AT PANAJI**(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)**

Appl. No. 01/2014

Shri Vinayak Tukaram Patil,
Flat No. 1, "D" Building,
Housing Board Colony,
Upasnagar, Zuarinagar, Sancoale,
Vasco-da-Gama, Goa-403 726 ... Applicant/Party I.

V/s

1. Shree Krupa Services Pvt. Ltd.,
Contractor to: M/s. Zuari
Industries Ltd.,
C/o. Mr. Paul T. Fernandes,
Plot No. 12, Queen Vision,
Near Verna Church,
Velsao-Pale, Salcete,
Goa-403 722 ... Opponent/Party II(1).
2. M/s. Zuari Agro Chemicals Ltd.,
Zuarinagar,
Sancoale, Goa
(403 726) ... Opponent/Party II(2).

Applicant/Party I represented by Shri G. J. Fernandes.

Opponent/Party II(1) represented by Shri K. V. Nadkarny.

Opponent/Party II(2) represented by Ld. Adv. Shri G. K. Sardessai.

AWARD

**(Delivered on this the 12th day of the month
of April of the year 2021)**

This is an application filed by the Applicant/
Party I under Section 2-A of Industrial Disputes
Act, 1947.

2. Briefly stated, the case of Party I workman is
as follows:

Party I workman joined the employment on
01-11-1984 as a 'Rigger' and was deployed to work
at the Factory of Party II(2) at Zuarinagar, Vasco-da-
Gama and at the time of his recruitment, the
clerical staff of the Party II(1) recorded his date of
birth as 05-12-1954 when his actual date of birth
was 05-12-1964. The Party I workman brought the
discrepancy to the knowledge of his superiors who
informed him to concentrate on his work and not
be alarmed by the erroneous date of birth recorded

in the company documents as the same would be
corrected in the course of time of his service and
informed him that he had a long period of service.
The Party I kept on reminding the Party II(1) and
Party II(2) about the error but they individually
and jointly did not take any concrete action. The
workman not being satisfied with the action of
Party II informed Goa Trade and Commercial
Workers' Union (GTCWU) about his grievance and
the Union vide letter dated 05-07-2011 wrote to
Party II(1) seeking rectification of the records in
respect of date of birth. The Employer did not take
any action. The Party I being aggrieved wrote to
Dy. Labour Commissioner under the Industrial
Disputes Act regarding the faulty record
maintained by the Employer and provided the
documentary evidence obtained from the Chief
Registrar of Births and Deaths in the form of Birth
Certificate. The Party II did not respond but vide
letter dated 11-08-2012 informed that the said
certificate has not been accepted and that they
would maintain 05-12-1954 as date of birth. The
Party I wrote to the Assistant Labour Commissioner
seeking his urgent intervention in the matter
but no action was initiated. The Party II(1) on
31-12-2012 wrongfully and illegally terminated the
services of Party I by way of superannuation. The
Party I addressed a letter to Party II(1) relating to
the matter. Thereafter, the Dy. Labour
Commissioner convened a meeting on 30-07-2013
between Party I workman and the Employer,
however, there was no outcome. The workman
being aggrieved by wrongful and illegal
termination of his services filed the present
application. The Party I is entitled for the relief
claimed.

3. The Party II(1) filed a Written Statement
inter-alia claiming that the claim filed by Party I
workman is bad in law and that he has not given
any justification for the demands. The dispute
raised by Party I is not an industrial dispute. The
Party I joined the services with Party II(1) in the
year 1984 and at the relevant time his date of birth
was 05-12-1954. The Party I was formally working
with M/s Grewal Engineering Services wherein the
Identity Card issued to him shows his date of birth
as 05-12-1954. The Party I had filled his PF
nomination form which is mandatory for an
employee on 15-01-2007 and in the said form also
the date of birth was recorded as 05-12-1954. The
Party I workman did not raise the issue of his date
of birth till he got a certificate of birth in the year
2010 in order to get undue advantage of further
period of 10 years of his services. The date of birth
of Party I is considered as final which is recorded

in their records as mentioned by Party I at the time of his joining the services of Party II(1). The Party I is trying to get his date of birth corrected at the fag end of his service tenure which is not permissible as per law. The present dispute is raised by Party I to pressurize and harass the Employer. The action taken by Party II(1) is perfectly legal and justified. The claim raised by Party I is unwarranted, false and baseless and as such he is not entitled for any relief.

4. The Party II(2) filed a Written Statement inter-alia contending that the reference is bad as against Party II(2). There was no demand on Party II(2) in the matter of alleged claim. There was no plea before the Conciliation Officer that Party I is an employee of Party II(2). There is no employer-employee relationship between Party I workman and Party II(2). The superannuation is neither termination nor dismissal. The Party I has been superannuated from the services as on 31-12-2012 on attaining the age of superannuation of 58 years. The Party I did not raise issue of his date of birth at any time earlier and the issue was raised after he got his date of birth registered fraudulently after 26 years in service of Party II(1) and the change in the date of birth cannot be altered at the fag end of his career.

5. The Party I filed a Rejoinder at Exhibit 12 denying the case put forth by Party II in the written statement of Party II(1) and Party II(2).

6. Issues framed at Exhibit 14 are as follows:

- 1) Whether the Party I proves that Party II(1) erroneously recorded his date of birth as 05-12-1954 instead of 05-12-1964 thereby his services were terminated by way of wrongful superannuation on 31-12-2012?
- 2) Whether the Party I proves that Party II(1) and Party II(2) are jointly and severally responsible for wrongful and illegal termination of his services by way of superannuation?
- 3) Whether the Party II(1) proves that the dispute raised by Party I is not an 'Industrial Dispute' and hence not maintainable?
- 4) Whether the Party II(2) proves that there is no Employer- Employee relationship between Party I and Party II(2)?
- 5) What relief? What Award?

7. In the course of evidence, the Party I, Shri Vinayak Patil examined himself as witness and produced on record his Affidavit-in-Evidence at Exh. 23 and documents namely, a copy of salary

slip for the month of June 2007 issued by Party II(1) at Exh. 24, a copy of certificate issued by Party II (1) dated 19-7-2009 at Exh. 25, a copy of certificate issued by Party II(1) to Party I dated 13-6-2011 at Exh. 26, a copy of certificate issued by Party II(1) to Party I dated 8-8-2012 at Exh. 27, a copy of birth certificate issued by Chief Registrar of Births and Deaths, Govt. of Karnataka at Exh. 28, a copy of letter dated 29-3-2013 to HR Manager of Party II(2) at Exh. 29, a copy of letter dated 16-4-2013 from ALC, Vasco to Party II(1) at Exh. 30, a copy of letter dated 30-07-13 from DLC, Margao at Exh. 31. In the cross examination, the Party II(1) produced through him a copy of letter dated 28-12-12 at Exh. 39 colly, a copy of the nomination and declaration form dated 15-01-2007 at Exh. 42. A copy of application for transfer of EPF account dated 15-01-2007 at Exh. 43, a copy of letter dated 26-11-2012 at Exh. 44. The Party I also examined Smt. Anjani Vinayak Patil as witness No. 2 and produced on record her Affidavit-in-Evidence at Exh. 45, a copy of notarized birth certificate of Vinayak Patil at Exh. 47. The Party I also examined Shri Maruti Desai as witness No. 3 and produced on record his Affidavit-in-Evidence at Exh. 49. On the other hand, the Party II (1) examined Shri Mohammad Usman Khan as their witness and produced on record his Affidavit-in-Evidence at Exh. 51, In the cross examination, the Party I produced through him a copy of letter dated 30-07-2013 at Exh. 52.

8. Heard arguments. Notes of written arguments came to be placed on record by the Parties.

9. I have gone through the records of the case and have duly considered the submissions made by the learned advocates for their respective Parties. My findings on the above issues are as follows:

Issue No. 1	...	In the Affirmative.
Issue No. 2	...	In the Negative.
Issue No. 3	...	In the Negative.
Issue No. 4	...	In the Affirmative.
Issue No. 5	As per final order

REASONS

Issue No. 1:

10. Learned representative Shri G. J. Fernandes for Party I workman has submitted that the services of Party I were terminated on 31-12-2012 prematurely by way of alleged superannuation without holding any inquiry in respect of correction of date of birth sought by the Party I as his date of birth has been wrongly recorded as 05-12-1954 when his date of birth was 05-12-1964. The arrogant and unilateral conduct of Party II has resulted in

the termination of the employment of Party I workman 10 years earlier than prescribed under mandatory provisions of The Industrial Employment (Standing Orders) Act, 1946. The Applicant was in continuous service from his date of appointment on 01-11-1982 till 31-12-2014. He further submitted that the Party II(1) and Party II (2) have neither maintained mandatory service records in Form V to prove that the date of birth of the workman was correctly recorded in the records of the industrial establishment. The Party II is required to maintain a service card bearing the signature/thumb impression of the workman, which has not been complied and therefore the termination of the services of Party I workman by way of superannuation is illegal and bad-in-law and as such, the Party I workman is entitled for the reliefs claimed.

11. Admittedly, the services of Party I were terminated by way of superannuation on 31-12-2012 without holding any inquiry whatsoever in respect of correction in the date of birth sought by the workman. There is no dispute that Party I had claimed that his date of birth was 05-12-1964 and had produced a certificate of birth issued by Appropriate Authority, while it is the case of Party II (1) that the date of birth recorded by it was 05-12-1954 and accordingly they had rightly discharged him on attaining the age of superannuation. There is no dispute that Party II (1) and Party II(2) had admitted in the reply to interrogatories that they had not conducted any inquiry with respect to the date of birth of the Party I workman who is claiming that he was born on 05-12-1964. There is no dispute that Party II (1) and Party II(2) have not maintained mandatory service records in Form V prescribed under The Industrial Employment (Standing Orders) Act, 1946 and the Industrial Employment (Standing Orders) Central Rules, 1946. It is also the admitted fact that Party II (1) and Party II(2) do not have their own Certified Standing Orders. Neither Party II (1) and Party II (2) can claim that the Industrial Employment (Standing Orders) Act, 1946 and Industrial Employment (Standing Orders) Central Rules 1946, are not applicable to them and they do not have their own Certified standing orders. It therefore follows that in the absence of Certified Standing Orders, Parties are governed under the above referred Act and Rules.

12. There is no dispute that the Party I workman is not required to plead law in his Statement of Claim as Party I has pleaded the facts and cause of action seeking relief, which he is claiming. The

contention of Advocates for Party II (1) and Party II (2) that there are no pleadings as regards to the applicability of the above Industrial Employment (Standing Orders) Act, 1946 and Industrial Employment (Standing Orders) Central Rules, 1946 cannot be accepted as in the Written Statement of Party II(1), it has been averred that the date of birth of Party I is considered as final which is recorded in their records as mentioned by Party I workman at the time of his joining the services of Party II(1) and as per the procedure in vogue in their organization and as per the settled law, the only date which can be taken in the account is the one which is recorded at the time of joining and the said date is not subject to any revision and that too at the fag end of his service tenure, which is an indication of the fact that the Party II (1) have maintained the service record as mandated by law at the time of joining of the services. It is also claimed that the date of birth is considered as final which is recorded in their records at the time of his joining the service, which in other words mean that Party II (1) is aware of the mandate of law in terms of the Industrial Employment (Standing Orders) Act and Central Rules, 1946.

13. There is no dispute that the Industrial Employment (Standing Orders) Act, 1946 and Industrial Employment (Standing Orders) Central Rules, 1946 are applicable to the parties in the present case as the above Act and the Rules have been extended to the State of Goa. There is also no dispute that Party I is a workman under Industrial Disputes Act as well as under the Factories Act, 1948. The Party I was employed by Party II(1) at the Factory of Party II(2) which is an industrial establishment. Rule 2(b) of the Industrial Employment (Standing Orders) Central Rules, 1946 define 'Form' as a form set out in Schedule II appended to the Rules. Notably, as per Form V, Standing Order 1, Schedule 1-B prescribed by the Rules, service card has to be mandatorily maintained under the Rules. The service card in Form V in the Rules has at Item No. 7, the date of birth and at Item No. 37, the date of superannuation which are necessary to be maintained in an industrial establishment by the Employer. The service card needs to bear the signature/thumb impression of the workman. There is no dispute that no service card as required under the above provision has been produced on record as maintaining of the service record is the personal responsibility of the Employer. The said procedural necessity of the Employer in an industrial establishment is mandated to be completed in three months by the Employer under the Industrial Employment (Standing Orders) Central Rules, 1946.

No such record has been maintained by Party II (1). The Employers cannot take advantage of their non-compliance of the statutory provisions as to maintaining the service record in Form V and completing the same within three months.

14. The Party II(1) have produced on record Identity Cards issued to the Party I by Party II(1) and M/s Grewal Engineering Services and the application filed before the Provident Fund Commissioner with a view to counterpoise the requirement of law claiming that as per the said documents, the Party I had given date of birth as 05-12-1954 correctly. However, the Identity Card produced by Party II at Exh. 39 Colly (3) itself has a wrong date as it is mentioned as 12-05-1954 instead of 05-12-1954 as claimed by Party II(1). The discrepancy in the said date has not been explained by Party II (1) as it is their claim that the date of birth of Party I is 05-12-1954 and not 12-05-1954 and therefore the Identity Card issued by Party II(1) to Party I is not a correct reflection of the date of birth of Party I and the Party II (1) cannot rely upon the said Identity Card issued by it as the date of birth has been incorrectly recorded in the said Identity Card. Moreover, Identity Cards are issued merely for the purpose of permitting the workman to enter/exit the premises of industrial establishment through the designated gates. The other Identity Card at Exh. 39 Colly(4) allegedly issued by Grewal Engineering Services has not been proved as none of the Officers of said Grewal Engineering Services have been examined. Moreover, the said date of birth has to be compulsorily maintained in Form V which is legally determinative of the date of birth and date of superannuation in respect of workman concerned and therefore, the Identity Cards produced by Party II (1) will not prove that his date of birth is as reflected in the said Identity Cards issued by Party II (1) and Grewal Engineering Services.

15. The Party II(1) has also produced on record the Nomination and Declaration Form dated 15-1-2007 of Party I with respect to Employees Provident Fund Organization at Exh. 42 (in cross) wherein the date of birth has been shown as 05-12-1954 under Employees Provident Funds and Miscellaneous Provisions Act, 1952. The said Act is undoubtedly an act to provide for the constitution of Provident funds and (Pension funds) and deposit-linked insurance fund for employees in factories and other establishments. The said Act is a beneficial piece of legislation and has no estoppel mandated that the date of birth of a beneficiary cannot be corrected, if wrongly entered.

It cannot be said that the date of birth of an employee is never wrongly recorded by the Employer and prescribes a procedure to correct the wrongly recorded date of birth in the records and the main document required for correction is the certificate issued by the Registrar of Births and Deaths. No doubt, the said Form has been signed by Party I. However, it is an admitted fact that the said Form has been filled by Shri Mohammed Usman Khan, the witness of Party II(1). He had claimed that he was employed as Booking Clerk-cum-Supervisor with Party II(1) and that the card was prepared for becoming member of PF on regularization of services of Party I in the year 1986. He claimed that the date of birth in the card and in all other Company's record was recorded as 05-12-1954 as the same was submitted by Party I. However, the Party II(1) has not produced any other documents allegedly maintained by the Company showing the date of birth as 05-12-1954. Moreover, in a pointed query raised by Party I in the cross examination 'Could a mistake or error have occurred when you recorded in your own handwriting the date of birth of the Applicant as 05-12-1954 in the Provident Fund Form at Exh. 42 (in cross)'; he answered that there is no mistake in the Form as recorded by him. Be that as it may, the Party II (1) has violated the provisions of law relating to industrial employment by not following the Industrial Employment (Standing Orders) Act, 1946 and the Central Rules, 1946.

16. The Party II(1) had not conducted any enquiry prior to termination of the Party I workman despite the workman having sought correction of his date of birth. There is also no dispute that a formal industrial dispute was also pending before the Conciliation Officer under the Industrial Disputes Act regarding the date of birth of Party I. The Party II (1) admittedly had not recorded the date of birth and date of superannuation as no mandatory records were maintained. They therefore cannot put forth the above two documents as the record of birth as they concealed their own non-compliance thereby adversely affecting the workman as regards to his age. No opportunity of hearing was afforded to the Party I/Applicant before termination. The Party II(1) has not tendered any justification for not holding preliminary departmental enquiry as regards to the age of Party I and therefore are not permitted to take solace in the fact that the Party I workman was given the Identity Cards and that he had filed the prescribed form before Provident Fund Authorities showing his correct date of birth. The conduct of Party II(1) in not holding enquiry and not

maintaining the record as per law is discriminatory and dehors the mandate of law.

17. Learned Advocates for Party II (1) and Party II (2) Shri K. V. Nadkarny and Shri G. K. Sardesai have both submitted that the Party I workman had submitted the copy of Certificate of Birth issued by the Authority as late as 2012 when he addressed a complaint dated 28-02-2012 wherein he has stated in his Affidavit that on 29-03-2012 he provided to both his Employers certified copy of the birth certificates and that Party II(1) informed vide letter dated 11-08-2012 that his documents were not accepted and that they would maintain the record without any correction. They further submitted that Party I workman retired on 31-12-2012 and the letter to the Conciliation Officer was addressed on 28-12-2012 when admittedly Party I worked for Grewal Engineering Services for 15-20 years and thereafter for Party II (1) since 2007. They further submitted that Party I workman has produced the birth certificate two days before his date of superannuation and one month prior to his actual date of retirement to the Dy. Labour Commissioner. Relying upon the cases of (i) **State of Maharashtra and Anr. v/s Gorakhnath Sitaram Kamble & Ors., 2011 ALL SCR 443**, (ii) **Yashwant G. Tambe v/s Union of India and Anr. 2010(4) ALL MR 315** and (iii) **Shaikh Dawood Shaikh Ommor @ Mujjawar v/s Reserve Bank of India and Another, 2004-II-LLJ 202**, they submitted that the change in date of birth cannot be permitted at the fag end of service tenure and no alteration of entry is permitted.

18. Per contra, Shri G. S. Fernandes, learned representative for Party I has submitted and rightly so that the Party II(1) have gravely violated the laws relating to industrial employment and has wrongly terminated the employment of Party I workman by way of superannuation ten years prior to that when he was legally permitted to remain and continue in employment without holding any enquiry or according him an opportunity of fair hearing, which is sufficient enough to set aside the order of termination issued by Party II (1). The action of Party II(1) cannot be countenanced by any law which has debarred him from earning his livelihood consisting of three members of his family as per Exh. 63 (in cross). The Party I has produced on record the copy of his Birth Certificate which Party II (1) never sought in terms of the requirement of law under Industrial Employment (Standing Orders) Act, 1946 and the Central Rules. The Certificate of Birth produced by Party I was maintained by statutory authority which raises a presumption of correctness of its entries and such

entries made in the statutory register are admissible in evidence. The entries as per Birth Certificate would prevail over entry made in the Identity Cards and the Form maintained by Provident Fund Organization, in the absence of any proof that the same was recorded at the instance of Party I workman. The Party II(1) and (2) therefore cannot brush aside the said Certificate of Birth as sham. It was enjoined on Party II (1) to hold an enquiry as regards to the authenticity of the said Birth Certificate before superannuating the Party I workman.

19. No doubt, it is well settled that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The lowest minimum requirement on the part of Party II (1) was to afford an opportunity to the person effected thereby, a fair hearing which has admittedly not been done by Party II (1) on the sole ground that the Party I workman sought permission for change in the date of birth at the fag end of his service career. Nonetheless, it is claimed by Party I in the Claim Statement as well as the Affidavit that the workman brought the discrepancies to the knowledge of the Superiors who informed him to concentrate on his work and not be alarmed by the erroneous date of birth recorded in the Company's document as the same would be corrected in the course of time of his service and that he had a long period of service and hence he should not be alarmed and that he kept on reminding the Employer about the error in records of the Company's documents which they represented that it was not urgent. The said fact has been denied by Party II (1). However, it is an admitted fact that the Party I had filed the application informing the said fact to both the Employers, however, no notice was taken nor it was informed that the application has been filed at the fag end of his service career and therefore the change of date cannot be permitted.

20. Needless to mention, the Party II (1) could have given opportunity to Party I once he produced the Birth Certificate issued by Competent Authority as any administrative order passed would involve civil consequences. The Industrial Employment (Standing Orders) Act, 1946 also postulates holding of enquiry before passing of any orders. The principles of natural justice has come to be recognized as being a part of the guarantee contained in Article 14 of the Constitution and violation of rule of natural justice results in arbitrariness which is the same as discrimination and therefore violation of principles of natural justice is a violation of Article 14 of the

Constitution. The Party II(1) has not produced the service record showing the date of birth and the date of superannuation which they are required to maintain. The non-production of the said documents constitute failure on the part of Party II(1) to produce the best evidence and the presumption has therefore to be raised against it that if such evidence had been produced, the same would have gone against it. Admittedly, no such documents have been maintained by Party II(1). The Party II (1) unilaterally decided to reject the certificate of birth produced by Party I which they should have sought from Party I at the time of his employment. The Party II(1) having not done the said act, the action of Party II(1) in retiring the workman before the date of superannuation must fail. The patently arbitrarily act of Party II(1) in not rectifying the date of birth and retiring him wrongly without holding an enquiry cannot be sustained in law.

21. The reliance placed by Party II(1) and Party II (2) on the case of (i) **State of Maharashtra and Anr.**, supra, is not applicable to the case at hand as in that case there was a notification by which the Government servant could not alter the date of birth after five years from 16-08-1981. No date of birth was recorded by Party II(1) at the time of entry of Party I into service as required under Industrial Employment (Standing Orders) Act, 1946 and the Central Rules. The Party I had no occasion to see his Service Book as it was not maintained nor he has signed the same. There is therefore no occasion for him to record his objection and therefore his silence cannot be accepted as accepting the date of birth as 05-12-1954. There is therefore no inordinate delay or laches on his part to seek necessary correction of the service record. His inaction therefore does not preclude him from showing that his entry of his date of birth was not correct. The Party I workman is also not a public servant unlike the case of *State of Maharashtra and Ors.*, supra nor there is any possibility of any other employees being effected for their respective promotions or that they are likely to suffer irreparable injury, on the contrary the Party I workman would lose about 10 years of service on account of lapse on the part of Party II (1). The Party I has clearly made out a case on the basis of materials placed before the Court and the Court is fully satisfied that there is a real injustice to the Party I workman. The reliance placed on the above case is therefore misplaced.

22. The Party II(1) has also relied upon the case of (ii) **Yashwant G. Tambe**, supra which is also not applicable to the case at hand as in that case the

workman accepted a particular date of birth to be his real date of birth throughout his career and enjoyed benefits of promotion on the basis of seniority list published from time to time and that the workman raised a dispute at the fag end of his service when he was on the verge of retirement and that the order retiring the workman on the basis of date of birth recorded in his school Leaving Certificate was found to be proper and therefore could not be assailed on the grounds that principles of natural justice were not followed, unlike in the present case where the facts are completely at variance as the Party I had not remained silent and had raised the dispute. There was no service record of Party I workman maintained by Party II(1) on the basis of any document nor it was done at the instance of Party I and therefore the present case cannot be equated to the case relied upon by Party II(1).

23. The reliance placed on (iii) **Shaikh Dawood Shaikh Ommor @ Mujjawar**, supra also cannot assist the Party II (1) in any way as the Party II (1) had no service record maintained as per the requirement of the law regarding the date of birth of Party I workman. It was throughout the case of Party I that he was born on 05-12-1964 as shown in the Birth Certificate, which certificate is not disputed by Party II (1) and therefore the reliance placed on the above case is not applicable as Party I had conclusive material to support his claim and that he had raised the dispute after he was assured that necessary correction would be made, but not made. In short, the Party I has sufficiently proved that the Party II (1) had erroneously recorded his date of birth as 05-12-1954 instead of 05-12-1964 thereby terminating his services by way of wrongful superannuation on 31-12-2012 and therefore issue No. 1 stands proved.

Issue No. 2 and 4.

24. Shri G. S. Fernandes, learned representative of Party I has submitted that the Party II (1) and Party II(2) are jointly and severely responsible for wrongful and illegal termination of his services by way of superannuation. He has claimed that both the Employers are responsible for wrongful termination of his services and therefore the Party I is entitled for the relief claimed against both the employers. Learned Adv. Shri G. K. Sardessai for Party II (2) has submitted and rightly so that it is an admitted fact that Party I was absorbed by the Contractor namely Party II (1) Shree Krupa Services Ltd. and prior to that he was working with Grewal Engineering Services who was the Contractor of Party II (2) namely; Zuari

Agro Chemicals Ltd. and that he never worked for Zuari Agro Chemicals and that he was employed by the Contractor and the Contractor was working for Party II(2) and therefore Party II(2) is not liable for any acts.

25. Interestingly, there was no demand by Party I on Party II(2) in the matter of alleged claim and there was also no demand by Party I on Party II(2) before the Conciliation Officer. There was also no plea before the Conciliation Officer that Party I is an employee of Party II (2) and therefore there is no employer-employee relationship between Party I workman and Party II (2). The Party I was also not relieved from the services of Party II(2) on his attaining of 58 years neither he was terminated or dismissed by Party II (2). There has neither been any pleadings nor made a reference in his Affidavit-in-Evidence with regard to applicability of the provisions of the Act with respect to Party II (2). The Party I therefore cannot get any relief from Party II (2) as he is neither employee of Party II(2) nor it is the case of Party I that he was employed by Party II (2) and therefore Party I has failed to prove that Party II (1) and Party II (2) are jointly and severely responsible for the alleged wrongful and illegal termination of his services on superannuation. On the other hand, the Party II (2) has proved that there is no employer-employee relationship between Party I and Party II (2) and therefore issue No. 2 is answered in the negative and issue No. 4 in the affirmative.

Issue No. 3.

26. Learned representative for Party II (1), Shri Nadkarny has submitted that the dispute raised by Party I is not an industrial dispute and therefore the reference is bad in law. However, the submission of Party II(1) is without any merit as any workman is entitled to raise a dispute under Section 2(k) of Industrial Disputes Act wherein any dispute or differences between employer and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the condition of labour, or any person can be termed as industrial dispute. The Party I workman has been unceremoniously terminated by Party II (1) without completing his entire tenure of service and therefore he has rightly raised a dispute and hence, above issue is answered in the negative.

Issue No. 5.

27. Needless to mention, the Party I has proved that the Party II (1) has terminated the services in

breach of the provisions of law and without holding any domestic enquiry. The Party II (1) had admittedly not maintained the service record which is the responsibility of the Employer. The date of birth and the date of superannuation were not recorded as required and terminated his services without any justification. The Party I workman was born on 05-12-1964 and has still two years of service before he attains superannuation under the law. It is, therefore, the Party I workman is required to be re-instated in service with full back wages, continuity in employment and all consequential benefits, as the termination of Party I workman by Party II (1) was not bonafide and bad in law and found to be utterly invalid. Moreover, the Employer had taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and has deprived the workman of his earnings and therefore the workman whose services have been illegally terminated would be entitled to reinstatement with full back wages and other reliefs, hence the above issue is answered accordingly.

28. In the result, I pass the following:

ORDER

1. It is hereby held that the action of the Party II (1) in terminating the services of Party I workman, Shri Vinayak Patil by way of superannuation with effect from 31-12-2012 is illegal and unjustified.
2. The Party II(1) is directed to re-instate the services of Party I workman with full back wages with continuity in employment and all consequential benefits.
3. Inform the Government accordingly.

Sd/-

(Vincent D'Silva)
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/2/2021-LAB/Part-II/214

The following award passed by the Labour Court-II, at Panaji-Goa on 26-03-2021 in Case No. Ref. LC-II/IT/05/15 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).
Porvorim, 29th April, 2021.

IN THE LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

**(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)**

Case No. Ref. LC-II/IT/05/15

Shri Shankar Parab,
C/o. Mohan Parab, Varcha Vada,
Menkurem, Colvale-Goa. Workman/Party I
V/s

M/s. Hindustan Unilever Ltd.,
Kundaim Industrial Estate,
Kundaim-Goa. ... Employer/Party II
Workman/Party-I represented by Shri Subhash Naik
George.

Employer/Party-II represented by Adv. Shri G.K.
Sardessai.

Panaji, dated: 26-03-2021

AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 17-06-2015, bearing No. 28/29/2015-Lab/614 referred the following dispute for adjudication to this Labour Court-II, Panaji, Goa.

"(1) Whether the action the management of M/s. Hindustan Unilever Limited, Plot No. 128-139 & 324-326, Kundaim Industrial Estate, Kundaim, Goa, in dismissing Shri Shankar Parab, Workman Grade A, with effect from 30-04-2014, is legal and justified?"

(2) If not, what relief the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. LC-II IT/05/15 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 28-08-2015 at Exb-4. The facts of the case in brief as pleaded by the Workman are that the Employer/Party II (for short, "Employer") is a Multinational Company engaged in the production of soaps. He stated that he was employed by the Employer initially as, "Trainee", vide its letter dated 14-08-2001. He stated that he was designated as "Probationer Worker", vide its letter dated 14-08-2002. He stated that he was confirmed in service by the Employer, vide its letter dated 14-11-2002. He stated that he was promoted to

"Workman Grade A" w.e.f. 01-04-2007, by its letter dated 01-04-2007.

3. He stated that he was issued a charge-sheet cum show-cause notice dated 10-05-2012. He stated that the charges levelled against him by the said charge-sheet are vague, false and fabricated. He stated that by the said charge-sheet, it was alleged that the said incident took place outside the factory premises after duty hours and that there is no provision in the Standing Orders of the Employer permitting them to issue charge-sheet in such alleged circumstances. He stated that he was also suspended from service pending enquiry. He stated that he denied the allegations levelled against him in the said charge-sheet.

4. He stated that the Employer, being not satisfied with his reply, held an enquiry into the charges levelled against him by appointing an Enquiry Officer. He stated that the Enquiry Officer submitted his findings to the Employer. He stated that thereafter, the Employer issued to him a second show-cause notice dated 14-03-2014 directing him as to why the report of the Enquiry Officer should not be accepted and that punishment shall not be imposed upon him. He stated that he replied to the said show-cause notice vide his letter dated 26-03-2014 giving reasons as to why the Employer shall not accept the report of the Enquiry Officer and that no action shall be taken against him. He stated that thereafter, he was dismissed from service by the Employer vide its letter dated 30-04-2014.

5. Aggrieved by the dismissal letter issued to him by the Employer, he raised an industrial dispute with the Employer demanding reinstatement in service with full back wages and continuity in service. He stated that as the Employer did not accept his demand, he wrote to Conciliation Officer to intervene in the dispute, which ended in failure. He contended that the enquiry in respect of the charge-sheet issued to him was held in violation of principles of natural justice. He submitted that the charges levelled against him are very vague. He submitted that the charges levelled in the charge sheet do not amounts to misconduct as per the Standing Orders of the Employer. He submitted that the findings submitted by the Enquiry Officer are perverse and not based on evidence on record. He submitted that the action of the Employer in terminating his services with effect from 30-04-2014 is illegal and unjustified. He submitted that since the date of his termination, he is unemployed and has no source of income. He submitted that presently, he makes both ends meet with family support and with the help of savings

he had made while he was in the employment of the Employer. The Workman therefore prayed for his reinstatement in service with full back wages and with continuity in service and other consequential benefits.

6. The Employer resisted the claim of the Workman by filing its written statement on 14-12-2015 at Exb. 5. The Employer, as and by way of its preliminary objections, submitted that the present reference filed by the Workman is bad-in-law and not maintainable, that the present dispute of the Workman is not an 'industrial dispute' as defined under I.D. Act, 1947, that there is no application of mind by the Appropriate Government while referring the present dispute and that the Workman was held to be guilty of the charges levelled against him by the Enquiry Officer, post an enquiry which was conducted in strict adherence to the principles of natural justice, after giving an ample opportunity to the Workman to be heard and for leading evidence.

7. The Employer stated that it is a Company registered under the Companies Act, 1956 and is carrying on the business of manufacturing of soaps. The Employer stated that the Workman was issued a suspension order dated 04-05-2012 for the charges amounting to gross misconduct and indiscipline (consisting of abuse, threatening and intimidation of his fellow workmen and his parents) which had been levelled against him by his fellow workman, Mr. Mahesh Naik, which warranted detailed investigation against him. The Employer stated that the Workman was suspended pending enquiry w.e.f. 05-05-2012. The Employer stated that the Workman was thereafter issued a charge-sheet cum show-cause notice dated 10-05-2012. The Employer stated that in the said charge-sheet issued to the Workman, it was alleged that he had been threatening Mr. Mahesh D. Naik, his co-worker in the unit for last two months period and that he visited Mr. Mahesh Naik's house two months back alongwith Mr. Vishwas Tari, another co-worker and threatened his mother. He abused Mr. Mahesh Naik with expletives and had also threatened Mr. Mahesh Naik on several occasions with dire consequences, in the company bus if he does not quit his job. That on 03-05-2012, he reported to work in B shift (4.00 p.m. to 12.00 a.m.). After completion of the shift at around 12.10 a.m. on 04-05-2012, he took the company transport bus to go back from work. It is reported that around 12.30 a.m., he again abused Mr. Mahesh Naik with words "gand mari and chodriya" in the company bus and physically assaulted him with tomatoes. He also threatened to kill him on that day, that he has caused lot of trouble to Mr. Mahesh Naik by

constantly verbally abusing and threatening him again with dire consequences if he does not quit the job on many occasions. The Employer stated that Mr. Mahesh Naik has complained with the local police administration about the behaviour of the Workman. The Employer stated that the said complaint was lodged in Ponda Police Station. The Employer stated that due to his complaint, police had come to the factory on 04-05-2012 and enquired about the incident in front of the gate and this incident has brought bad name for the company. The Employer stated that the aforesaid act constitute very serious and grave misconduct as stipulated under the Certified Standing Orders, which are in force and applicable to the Workman. The Employer stated that the Workman was therefore charged with the following clauses:

Clause 21 (12): "Commission of any act subversive of discipline or good behaviour on the premises of the establishment or outside of it adversely affect the discipline or business of the establishment."

Clause 21 (35): "Restraining or detaining or gheraoing any representative/employee or employees of the company either inside or outside the premises of the Company."

Clause 21 (40): "Use of impolite or insulting or abusive language, assault or threat of assault, intimidation or coercion within the premises of the company or any other person authorized to work in the company and any such act outside the premises of the company, if it directly affects or likely to affect the discipline or work or business of the company."

8. The Employer stated that the Workman filed his reply dated 31-05-2012 to the charge-sheet issued to him. The Employer stated that as the reply filed by the Workman was found to be unsatisfactory, they conducted an enquiry into the said charge-sheet by appointing Mr. A. M. Gaikwad as an Enquiry Officer. The Employer stated that Ld. Enquiry Officer conducted an enquiry in an impartial manner and every opportunity was given to the Workman to defend the charges levelled against him. The Employer stated that the Workman fully participated in the said enquiry. The Employer stated that after completion of the enquiry, Ld. Enquiry Officer submitted his findings dated 22-10-2013. The Employer stated that after appreciating the evidence on record, Ld. Enquiry Officer held the Workman guilty of the charges levelled against him. The Employer stated that it has considered the proceedings of the enquiry, the findings of the Enquiry Officer dated 22-10-2013

and concurred with the same. The Employer stated that it has considered the past records of the Workman and they did not find any extenuating circumstances. The Employer stated that the Workman was accordingly served with the second show-cause notice dated 14-03-2014 alongwith the findings of the Enquiry Officer, directing him as to why they should not proceed with appropriate action. The Employer stated that the Workman filed his reply vide his reply, dated 26-03-2014 to the aforesaid show-cause notice. The Employer stated that after carefully perusing the contents of the said reply of the workman, they did not find the satisfactory explanation. The Employer stated that it has considered the past records of the Workman and did not find any extenuating circumstances and in view of the gravity of the proved misconduct, they dismissed the Workman with immediate effect, vide its letter dated 30-04-2014. The Employer denied the overall case as pleaded by the Workman and prayed for dismissal of the present reference.

9. Thereafter, an opportunity was given to the Workman to file re-joinder to the written statement filed by the Employer. However, Ld. Rep. Shri Subhash Naik George, appearing for the Workman submitted that he do not wish to file any re-joinder on behalf of the Workman.

10. Based on the pleadings filed by the respective parties, this court framed the following issues on 16-03-2016 at Exb. 8.

1. Whether a fair, proper and impartial enquiry was conducted against the Workman/ /Party I in respect of charge-sheet dated 10-05-2012 in accordance with the principles of natural justice?
2. Whether the charges of misconduct leveled against the Workman vide charge-sheet dated 10-05-2012 have been proved to the satisfaction of this court by acceptable evidence?
3. Whether the Party I/Workman proves that the action of the Employer/Party II in dismissing him from services w.e.f. 30-04-2014 is illegal and unjustified?
4. Whether the Employer/Party II proves that the present order of reference issued by Government of Goa is bad-in-law and not maintainable in view of the submissions made in para "a" to "d" of its written statement?

5. Whether the Workman is entitled to any relief?

6. What Order? What Award?

11. My answers to the aforesaid issues are as under:

- | | |
|---------------------|---|
| (a) Issue No. 1 | : In the Affirmative. |
| (b) Issue No. 2 | : Partly in the Affirmative and Partly in the Negative. |
| (c) Issue No. 3 | : In the Negative. |
| (d) Issue No. 4 | : In the Negative. |
| (e) Issue No. 5 & 6 | : As per final order. |

Both the parties filed their synopsis of written arguments respectively. I have carefully perused the entire records of the present case including the synopsis of written arguments filed by both the parties and is of the opinion as under:

REASONS

12. Issue No. 1 and 2:

By order dated 23-08-2018, passed in my findings on the preliminary issue No. 1 and 2, I have discussed and come to the conclusion that a fair and proper enquiry has been conducted against the Workman in accordance with the principles of natural justice read with provisions of the Certified Standing Orders of the Employer Company and that it is further held that except the charge of misconduct i.e. **Clause 21 (35)**: "Restraining or detaining or gheraoing any representative/ /employee or employees of the company either inside or outside the premises of the Company." of the Certified Standing Order of the Employer Company, the management has successfully proved the other two charges of misconduct namely **Clause 21 (12)**: "Commission of any act subversive of discipline or good behaviour on the premises of the establishment or outside of it adversely affect the discipline or business of the establishment" and **Clause 21 (40)**: "Use of impolite or insulting or abusive language, assault or threat of assault, intimidation or coercion within the premises of the company or any other person authorized to work in the company and any such act outside the premises of the company, if it directly affects or likely to affect the discipline or work or business of the company." leveled against the Workman vide charge sheet dated 10-05-2012. The issue No. 1 is therefore answered in the affirmative and issue No. 2 is partly answered in the affirmative and partly in the negative.

13. Issue No. 3:

The Workman filed his statement of claim in the present matter, which is on record at Exb. 4. It

appears from the statement of claim filed by the Workman that he challenged his dismissal from service by contending to be illegal and unjustified on the ground that the enquiry conducted against him is in total violation of principles of natural justice and also contrary to the provisions of the Certified Standing Orders, that the findings given by the Enquiry Officer are totally perverse and not based on evidence on record and that the charges levelled against him are not misconducts as per the provisions of the Certified Standing Orders. The burden to prove the issue No. 3 was cast on the Workman.

14. As stated above, by order dated 23-08-2018 passed in my findings on the preliminary issue No. 1 and 2, I have discussed and come to the conclusion that a fair and proper enquiry has been conducted against the Workman in accordance with the principles of natural justice read with provisions of the Certified Standing Orders of the Employer Company and that it is further held that except the charge of misconduct i.e. **Clause 21 (35):** "Restraining or detaining or gheraoing any representative/employee or employees of the company either inside or outside the premises of the Company." of the Certified Standing Order of the Employer Company, the management has successfully proved the other two charges of misconduct namely **Clause 21 (12):** "Commission of any act subversive of discipline or good behaviour on the premises of the establishment or outside of it adversely affect the discipline or business of the establishment" and **Clause 21 (40):** "Use of impolite or insulting or abusive language, assault or threat of assault, intimidation or coercion within the premises of the company or any other person authorized to work in the company and any such act outside the premises of the company, if it directly affects or likely to affect the discipline or work or business of the company." leveled against the Workman vide charge sheet dated 10-05-2012.

15. Ld. Rep. Shri Subhash Naik, representing the Workman, in his written synopsis stated that the punishment of dismissal imposed upon the Workman is shockingly disproportionate. As there is no pleadings as well as evidence of the Workman to suggest that the punishment imposed upon him is shockingly disproportionate, I do not find any merits in the arguments of Ld. Rep. Shri Subhash Naik.

16. Even otherwise, the Workman is governed by Certified Standing Orders (CSO) of the Employer. Clause 23 (a) of the CSO provides for various kinds

of punishment and it differs from warning or censured to dismissal without notice or payment in lieu of notice. In terms of Clause 23 (d) of the CSO, an enquiry shall be held against the Workman by giving him a charge-sheet clearly setting forth the circumstances appearing against him and requiring explanation. In terms of Clause 23 (g) of the CSO, the Manager shall take into account the gravity of the misconduct, the previous records if any of the Workman and any other extenuating or aggravating circumstances that may exist while awarding the punishment.

17. The evidence on record indicates that the Workman joined in the services of the Employer since 14-08-2001 as 'Trainee Worker' and later he was issued order of 'probationary worker' on 14-08-2002. The Workman was confirmed in service w.e.f. 14-11-2002.

Ld. Adv. Shri G.K. Sardesai, representing the Employer, in his synopsis of written arguments has relied upon the following judgments.

18. In the case of **Mahendra Nissan Allwyns Ltd. v/s M.P. Siddappa and Anr, reported in (2000) ILL J168 SC**, before the Hon'ble Apex Court, by an award, the Labour Court confirmed the order of removal from service. On a writ petition filed by the Respondent, the Hon'ble High Court came to the conclusion that the punishment imposed against the Workman is not proportionate to the charges levelled against him and that the charges of misconduct were not in serious nature. While allowing the appeal filed by the Respondent, the Hon'ble Apex Court held that

"3. The High Court found no fault with finding that the charges had been proved. It found that the charges were not serious in nature and the punishment that was imposed was disproportionate.

4. We do not agree with the High Court. The charges are of a serious nature. The first respondent was found to have led out workmen from the factory premises regardless of the challenge by the Security Guard. Along with these workmen, the first respondent entered the administrative building of the appellant and the room of the Deputy Manager. The Deputy General Manager and Manager (Personnel) were abused in Filthy language and threatened, examples of which have been given. Misbehavior was also proved against the first respondent in his conduct with five executives of the appellants. If these are not

serious charges against workman worthy of his dismissal from service, we do not know what can be. The High Court was quite wrong in the conclusion that it reached and in the order that it passed the punishment imposed against the respondent must remain unaltered."

19. In case of **Mahindra and Mahindra V.N.B. Narawade**, reported in 2005 (3) SCC 134, the Hon'ble Supreme Court held as under:

"It is no doubt true that after introduction of section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with labour court/industrial tribunal in interfering with the quantum of punishment awarded by the management, where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstance which requires the reduction of the sentence, or the past misconduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the labour court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed here above at least in two of the cases cited before us, i.e., Orissa Cement Ltd. (supra) and New Shorrock Mills (supra), this Court held: "punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all forums below have held that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor to herein above."

20. In the case of **Bharat Forge Co. Ltd. V. Uttam Manohar Nakate**, reported in 2002 (2) SCC 489, the Supreme Court held as under:

"Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in

terms of the provisions of the Act, must act within the four-corner thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other.

If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous ground."

21. In the case of **Anand Bazar Patrika V. Their Employees**, reported in 1963-II L.L.J. 429, the Supreme Court dealt with the extent of jurisdiction of Labour Court or an Industrial Tribunal and observed as follows:

"The extent of the jurisdiction which a labour Court or an industrial Tribunal can exercise dealing with such disputes is well-settled. If the termination of an industrial employee's service has been preceded by a proper domestic enquiry which has been held in accordance with the rules of natural justice and the conclusions reached at the said enquiry are not perverse, the Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. If, on the other hand, in terminating the services of the employee, the management has acted maliciously or vindictively or has been actuated by a desire to punish the employee for his trade union activities, the Tribunal would be entitled to give adequate protection to the employee by ordering his reinstatement, or directing in his favour the payment of compensation: but if the enquiry has been proper and the conduct of the management in dismissing the employee is not mala fide, than the Tribunal cannot interfere with the conclusions of enquiry officer, or with the orders passed by the management after accepting the said conclusion."

22. In the case of **Bemco Hydraulics, Ltd. Versus Deputy Labour Commissioner and Conciliation Officer and another** reported in 1960(61) FLR 8, the Hon'ble High Court of Karnataka has observed as under:

"In the present case as the charge discloses, the assault committed by the second respondent workman was purely a private matter as he committed the acts of assaulting the workman who were not supporting the strike, outside of employment. Assault was

committed to terrorize the workman outside of employment with a view to force him to work, which acts certainly constitute an act subversive of discipline. It is open to the employer to take disciplinary action against the delinquent workman when the act complained of is not far too remote and unconnected with the employment but one which has casual connection which has link between the alleged conduct of misconduct and employment is real and substantial, immediate and not remote or tenuous, as was noticed by the Supreme court in the case Glaxo Laboratories (India), Ltd. [1985-I L.L.N 57].

23. Among the aforesaid judgments, the principle laid down by the Hon'ble Apex Court in its case of **Mahendra Nissan Allwyns Ltd (supra)** is applicable to the case in hand. In the instant case, the misconducts proved against the Workman are grave and serious in nature. The Workman was in the services of the Employer for around 12 to 13 years. There is no mitigating circumstances by which the Workman entitled for lesser punishment than his dismissal from service. In my considered opinion, the punishment imposed upon the Workman of dismissal from service is just, fair and proper and proportionate to the proved misconduct. Hence, it is held that Workman failed to prove that the action of the Employer in dismissing him from service w.e.f. 30-04-2014 is illegal and unjustified. The issue No. 3 is therefore answered in the negative.

24. *Issue No. 4:*

The Employer, as and by way of its preliminary objections, submitted that the reference filed by the Workman is bad-in-law, that the present dispute raised by the Workman is not an 'industrial dispute' as defined under the Industrial Disputes Act, 1947, that there is non-application of mind by the Appropriate Government while referring the present dispute and that the Workman was held guilty of the charges levelled against him by the Enquiry Officer, post an enquiry which was conducted in strict adherence to the principles of natural justice after giving an ample opportunities to the Workman of being heard and for leading evidence. The burden was cast on the Employer to prove its aforesaid allegation.

25. The term 'industrial dispute' has been defined u/s 2 (k) of the I.D. Act, 1947 and it means "*any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms*

of employment or with the conditions of labour, of any person." In the case in hand, it is not in dispute that the Party I is a 'Workman' within the meaning of Sec. 2 (s) of the I.D. Act, 1947 and the Party II is an Employer within the meaning of Section 2 (j) of the I.D. Act, 1947. Consequently, the present dispute raised by the Workman pertaining to his non-employment w.e.f. 30-04-2014 is an 'industrial dispute' within the meaning of Sec. 2 (k) of the I.D. Act, 1947.

Hence, I do not find any merits in the submissions of the Employer that the reference is not maintainable in law. It is therefore, held that the Employer failed to prove that the present order of reference issued by the Government of Goa is bad-in-law and not maintainable. The issue No. 4 is therefore answered in the negative.

26. *Issue No. 5:*

While deciding the issue No. 3 hereinabove, I have discussed and come to the conclusion that the action of the Employer in dismissing him from service w.e.f. 30-04-2014 is legal and justified. The Workman is therefore not entitled to any relief. The issue No. 5 is therefore answered in the negative.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action the management of M/s. Hindustan Unilever Limited, Plot No. 128-139 & 324-326, Kundaim Industrial Estate, Kundaim, Goa, in dismissing Shri Shankar Parab, Workman Grade A, with effect from 30-04-2014, is legal and justified.
2. It is held that the Workman, Shri Shankar Parab, is not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2021-LAB/Part-II/213

The following award passed by the Labour Court-II, at Panaji-Goa on 30-03-2021 in Case No. LC-II/IT/04/2015 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).
Porvorim, 29th April, 2021.

IN THE LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

**(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)**

Case No. LC-II/IT/04/2015

Shri Vishwas Tari,
Surrchem Bhat,
Kumbharjua, Goa.

... Workman/Party I

V/s

M/s. Hindustan Unilever Limited,
Kundaim Industrial Estate,
Kundaim, Goa.

... Employer/Party II

Workman/Party I represented by Shri Subhash Naik
George.Employer/Party II represented by Adv. Shri G. K.
Sardessai.

Panaji, Dated: 30-03-2021.

AWARD

1. In exercise of the powers conferred by Section 10 (1) (c) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 17-06-2015, bearing No. 28/31/2015-Lab/595, referred the following dispute for its adjudication to this Labour Court-II of Goa at Panaji, Goa.

- "(1) Whether the action of the management of M/s. Hindustan Unilever Limited, Plot No. 128-139 & 324-326, Kundaim Industrial Estate, Kundaim, Goa, in dismissing Shri Vishwas Tari, Workman Grade B, with effect from 30-04-2014, is legal and justified?
- (2) If not, what relief, the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. LC-II-IT/4/2015 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 09-05-2015 at Exb. 4. The facts of the case in brief as pleaded by the Workman are that the Employer/Party-II (for short 'Employer') is a multi-national factory and is engaged in the production of soap. He stated that he was engaged by the Employer initially as a 'trainee' vide letter dated 25-08-2006 in its aforesaid factory. He stated that he was employed as a "Probationary Worker", vide letter of the Employer dated 26-08-2007. He stated that thereafter, he was confirmed in the services, vide letter of the Employer dated 26-11-2007.

3. He was issued a charge-sheet cum show-cause notice dated 12-02-2012 allegedly vague, false and fabricated charge-sheet. He stated that he was suspended from service pending enquiry. He stated that he replied to the said charge-sheet denying the allegations levelled against him. He stated that the Employer however, not satisfied with the reply filed by him, held an enquiry against him by appointing an Enquiry Officer. He stated that the Enquiry Officer conducted an enquiry and submitted his findings to the Employer. He stated that thereafter, the Employer issued the second show-cause notice dated 21-01-2014 to him asking why the report of the Enquiry Officer should not be accepted and why the punishment should not be imposed upon him. He stated that he replied to the said show-cause notice dated 21-01-2014, vide his letter dated 03-02-2014 giving reasons as to why the Employer shall not accept the report of the Enquiry Officer and no action shall be taken against him. He stated that thereafter, the Employer dismissed him from their services w.e.f. 30-04-2014. Aggrieved by the said letter of dismissal, he raised an industrial dispute with the Employer demanding reinstatement in service with full back wages and continuity in service, which ended in failure.

4. The Workman contended that the Enquiry Officer conducted the enquiry in total violation of the principles of natural justice. He submitted that the Enquiry Officer was biased in favour of the management. He submitted that the findings given by the Enquiry Officer were totally perverse and not based on evidence on record of the enquiry proceedings as well as contrary to the provisions of the Standing Orders applicable to him. He submitted that the charges levelled against him are not misconducts as per the provisions of the Standing Orders. He submitted that the charges levelled against him have not been proved. He submitted that the charges levelled against him in the charge-sheet does not amounts to misconduct as per the Standing Orders of the Employer. He submitted that the action of the Employer in terminating his services w.e.f. 30-04-2014 is illegal and unjustified. He submitted that since the date of his termination, he is unemployed and has no source of income. He stated that presently he makes both ends meet with family support and with the help of savings he had, while he was in the employment of the Employer. The Workman therefore, prayed that he be reinstated in service with full back wages and continuity in service with cost.

5. The Employer resisted the claim of the Workman by filing its written statement on 14-12-2015 at Exb. 5. The Employer, as and by way of its preliminary objections, submitted that the present reference filed by the Workman is bad-in-law and hence not maintainable, that the present dispute raised by the Workman is not an industrial dispute as defined under the Industrial Disputes Act, 1947, that there is non-application of mind by the Appropriate Government while referring the present dispute and that the Workman was held to be guilty of the charges levelled against him by the Enquiry Officer, which was conducted in strict adherence to the principles of natural justice, after giving an ample opportunities to him to be heard and for leading evidence.

6. The Employer stated that it is a company registered under the Companies Act, 1956 and carrying on the manufacturing of soap. The Employer stated that the Workman was issued a suspension order dated 12-02-2012 as there were specific complaints against him of physical abuse, threatening and intimidation of his fellow Workman and his parents as well as other serious misconducts warranting detailed investigations. The Employer stated that the Workman was suspended pending enquiry with immediate effect. The Employer stated that the Workman was informed that he would be served with a show-cause notice/charge-sheet in due course and that an independent enquiry would be conducted into the charges levelled against him in terms of the standing orders applicable to him. The Employer stated that the Workman replied the said suspension letter, vide his letter dated 13-02-2012. The Employer stated that the Workman was thereafter issued a charge-sheet cum show-cause notice dated 20-02-2012. The Employer stated that in the charge-sheet issued to the Workman, it was alleged that he reported for work on 12-02-2012 in B shift (4.00 p.m. to 12.00 a.m.) and reported to work in packing hall for carrying out the duties for the WRA operations and packing operations. The Employer stated that it was further alleged that at around 6.10 p.m., he approached Mr. Mahesh Naik, employee card No. 442 in the canteen hand washing area and asked him in anger and in a threatening tone "why did you lodge a police complaint against him and that it is reported against him that he then slapped Mr. Mahesh Naik on his left cheek and that after slapping him, he threatened him again that "now go and complain about this and that he do not fear anybody". The Employer stated that it was further alleged that

prior to the above mentioned incident, he had threatened Mr. Mahesh Naik on previous occasions as well as to resign from the services of the Company for accepting long term settlement dated 07-11-2011 with the company and that on 06-02-2012, he had threatened him in the company bus that if he fails to resign within one month, he will physically abuse him because he signed the settlement and that it was also reported that on 02-02-2012, he went to his residence and threatened his parents that as Mahesh has accepted the long term settlement, he should resign from the company else he will physically abuse him. The Employer stated that the Workman was therefore charged for the following misconducts as stipulated under the Certified Standing Orders which are in force and applicable to him.

Clause 21 (1): "Wilful insubordination or disobedience, whether or not in combination with others, to any lawful and reasonable order of a superior;

Clause 21 (8): Habitual breach of any standing order or any law applicable to the establishment or any rules made thereunder."

Clause 21 (11): ".....riotous, disorderly, indecent or improper behaviour on the premises of the establishment or outside the premises of the establishment if it adversely affects or is likely to affects or is likely to affect the working or discipline of the establishment."

Clause 21 (12): Commission of any act subversive of discipline or good behaviour on the premises of establishment or outside of it adversely affect the discipline or business of the establishment."

Clause 21 (32): "Wilful interference with the work of other workmen".

Clause 21 (35): "Restraining or detaining or gheraoing any representative/employee or employees of the Company either inside or outside the premises of the Company".

Clause 21 (40): "Use of impolite or insulting or abusive language, assault or threat of assault, intimidation or coercion within the premises of the Company against any employee of the Company or any other person authorized to work in the Company, and any such act outside the premises of the Company, if it directly affects or is likely to affect the discipline or work or business of the Company".

Clause 21 (52): To manhandle or obstruct other workers from attending their duties".

7. The Employer stated that the Workman filed his reply dated 25-02-2012 to the charge-sheet-/show cause notice. The Employer stated that they having found the reply unsatisfactory, issued a notice of enquiry dated 09-03-2012 to the Workman informing him about the enquiry. The Employer stated that they conducted an enquiry into the above said charges. The Employer stated that the enquiry was conducted by Mr. Vijay Palekar, the Enquiry Officer, in impartial manner and every opportunity was given to the Workman to defend the charges levelled against him and the Workman fully participated in the enquiry. The Employer stated that the entire proceedings were duly recorded and accounted for, to the knowledge and satisfaction of both parties. The Employer stated that the Enquiry Officer, after holding an enquiry in strict compliance to the principles of natural justice, submitted his findings, vide a speaking and reasoned enquiry report dated 28-12-2013 specifically recording the fact that a police complaint had been filed by the victim against the Workman with the Ponda Police Station on 13-02-2012 regarding the aforementioned misconducts committed by the Workman and that a doctor had duly examined the victim post his physical abuse by the Workman. The Employer stated that as per the findings in the Enquiry Report, the Workman had not only been threatening the victim repeatedly for signing the long term settlement but his parents as well. The Employer stated that the Workman through his threats, was telling the victim to resign from the services of the Employer. The Employer stated that consequently, Ld. Enquiry Officer found the Workman guilty of the charges levelled against him in the charge sheet cum show-cause notice hereinabove mentioned. The Employer stated that after appreciating the evidence on record, they held the Workman guilty of the charges levelled against him by them. The Employer stated that they considered the proceedings of the enquiry, the findings of the Enquiry Officer dated 28-12-2013 and concurred with the same. The Employer stated that they considered the past record of the Workman. The Employer stated that they did not find any extenuating circumstances and accordingly the Workman was served with a second show cause notice dated 21-04-2014 along with findings of the Enquiry Officer as to why the company should not proceed with the appropriate action. The Employer stated that the Workman filed his reply dated 03-02-2014. The Employer stated that after carefully perusing the contents of the replies of the Workman and once again going

through the proceedings of the enquiry and the findings of the Enquiry Officer dated 28-12-2013, did not find the explanation satisfactory. The Employer stated that they concurred with the Enquiry Report cum findings submitted by the Enquiry Officer. The Employer stated that they considered the past record of the Workman and did not find any extenuating circumstances. The Employer stated that in view of the gravity of the proved misconducts, they dismissed the Workman with immediate effect vide letter dated 30-04-2014. The Employer denied the overall case as pleaded by the Workman and prayed for dismissal of the present reference.

8. Thereafter, case was fixed for filing rejoinder on 08-01-2016. However, Ld. Rep. Shri Subhash Naik George appearing for the Workman submitted that he does not wish to file any rejoinder.

9. Based on the pleadings filed by the respective parties, this court framed following issues on 16-03-2016 at Exb. 8.

1. Whether a free, fair and proper enquiry has been conducted against the Party I/Workman in respect of charge-sheet dated 20-02-2012 in accordance with the principles of natural justice?
2. Whether the charges of misconduct leveled against the Workman vide charge sheet dated 20-02-2012 have been proved to the satisfaction of this court by acceptable evidence?
3. Whether the Party I/Workman proves that the action of the Employer/Party II in dismissing him from services w.e.f. 30-04-2014 is illegal and unjustified?
4. Whether the Employer/Party II proves that the present order of reference issued by the Government of Goa is bad-in-law and not maintainable in view of the submissions made in para "a" to "d" of its written statement?
5. Whether the Workman is entitled to any relief?
6. What Order? What Award?

10. My answers to the aforesaid issues are as under

- | | |
|-----------------|---|
| (a) Issue No. 1 | : In the Affirmative. |
| (b) Issue No. 2 | : Partly in the Affirmative
and
Partly in the Negative. |
| (c) Issue No. 3 | : In the Negative. |

- (d) Issue No. 4 : In the Negative.
 (e) Issue No. 5 & 6 : As per final order.

Both the parties filed their synopsis of written arguments respectively. I have carefully perused the entire records of the present case including the synopsis of written arguments filed by both the parties and is of the opinion as under:

REASONS

11. Issue No. 1 and 2:

By order dated 12-12-2019, passed in my findings on the preliminary issue No. 1 and 2, I have discussed and come to the conclusion that a fair and proper enquiry has been conducted against the Workman in accordance with the principles of natural justice and that it is further held that except the charge of misconduct i.e. **Clause 21 (1)**: "wilful insubordination or disobedience whether or not in combination with another of any lawful and reasonable order of a superior", all the charges of misconduct levelled against the Workman vide charge-sheet dated 20-02-2012 have been proved to the satisfaction of this court by acceptable evidence. The issue No. 1 is therefore answered in the affirmative and issue No. 2 is partly answered in the affirmative and partly in the negative.

12. Issue No. 3:

The Workman filed his statement of claim in the present matter, which is on record at Exb. 4. It appears from the statement of claim filed by the Workman that he challenged his dismissal from service by contending to be illegal and unjustified on the ground that the enquiry conducted against him is in total violation of principles of natural justice and also contrary to the provisions of the Certified Standing Orders, that the findings given by the Enquiry Officer are totally perverse and not based on evidence on record and that the charges levelled against him are not misconduct as per the provisions of the Certified Standing Orders. The burden to prove the issue No. 3 was cast on the Workman.

13. As stated above, by order dated 12-12-2019 passed in my findings on the preliminary issue No. 1 and 2, I have discussed and come to the conclusion that a fair and proper enquiry has been conducted against the Workman in accordance with the principles of natural justice and it is further held that except the charge of misconduct i.e. **Clause 21 (1)**: "wilful insubordination or disobedience whether or not in combination with another of any lawful and reasonable order of a superior", all the charges of misconduct levelled

against the Workman vide charge-sheet dated 20-02-2012 have been proved to the satisfaction of this court by acceptable evidence.

14. Ld. Rep. Shri Subhash Naik, representing the Workman, in his written synopsis stated that the punishment of dismissal imposed upon the Workman is shockingly disproportionate. As there is no pleadings as well as evidence of the Workman to suggest that punishment of dismissal from service is disproportionate to the proved misconduct, I do not find any merits in the submissions of Ld. Rep. Shri Subhash Naik, appearing for the Workman.

15. Even otherwise, the Workman is governed by Certified Standing Orders (CSO) of the Employer. Clause 23 (a) of the CSO provides for various kinds of punishment and it differs from warning or censured to dismissal without notice or payment in lieu of notice. In terms of Clause 23 (d) of the CSO, an enquiry shall be held against the Workman by giving him a charge-sheet clearly setting forth the circumstances appearing against him and requiring explanation. In terms of Clause 23 (g) of the CSO, the Manager shall take into account the gravity of the misconduct, the previous records if any of the Workman and any other extenuating or aggravating circumstances that may exist while awarding the punishment.

16. The evidence on record indicates that the Workman joined in the services of the Employer initially as a "Trainee", vide letter dated 25-08-2006 and later he was issued order of "Probationary worker" on 26-08-2007. The Workman was confirmed in service w.e.f. 26-11-2007.

Ld. Adv. Shri G.K. Sardesai, representing the Employer, in his synopsis of written arguments has relied upon the following judgments.

17. In the case of **Mahendra Nissan Allwyns Ltd. v/s M.P. Siddappa and Anr**, reported in (2000) I LLJ168 SC, before the Hon'ble Apex Court, by an award, the Labour Court confirmed the order of removal from service. On a writ petition filed by the Respondent, the Hon'ble High Court came to the conclusion that the punishment imposed against the Workman is not proportionate to the charges levelled against him and that the charges of misconduct were not in serious nature. While allowing the appeal filed by the Respondent, the Hon'ble Apex Court held that

"3. The High Court found no fault with finding that the charges had been proved. It found that the charges were not serious in nature

and the punishment that was imposed was disproportionate.

4. We do not agree with the High Court. The charges are of a serious nature. The first respondent was found to have led out workmen from the factory premises regardless of the challenge by the Security Guard. Along with these workmen the first respondent entered the administrative building of the appellant and the room of the Deputy Manager. The Deputy General Manager and Manager (Personnel) were abused in Filthy language and threatened, examples of which have been given. Misbehavior was also proved against the first respondent in his conduct with five executives of the appellants. If these are not serious charges against workman worthy of his dismissal from service, we do not know what can be. The High Court was quite wrong in the conclusion that it reached and in the order that it passed the punishment imposed against the respondent must remain unaltered."

18. In case of **Mahindra and Mahindra V.N.B. Narawade**, reported in 2005 (3) SCC 134, the Hon'ble Supreme Court held as under:

"It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with labour court/industrial tribunal in interfering with the quantum of punishment awarded by the management, where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstance which requires the reduction of the sentence, or the past misconduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the labour court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed here above at least in two of the cases cited before us, i.e., Orissa Cement Ltd. (supra) and New Shorrock Mills

(supra), this Court held: "punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all forums below have held that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor to herein above."

19. In the case of **Bharat Forge Co. Ltd. V. Uttam Manohar Nakate**, reported in 2002 (2) SCC 489, the Supreme Court held as under:

"Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four-corner thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other.

If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous ground."

20. In the case of **Anand Bazar Patrika V. Their Employees**, reported in 1963-II L.L.J.429, the Supreme Court dealt with the extent of jurisdiction of Labour Court or an Industrial Tribunal and observed as follows:

"The extent of the jurisdiction which a labour Court or an industrial Tribunal can exercise dealing with such disputes is well-settled. If the termination of an industrial employee's service has been preceded by a proper domestic enquiry which has been held in accordance with the rules of natural justice and the conclusions reached at the said enquiry are not perverse, the Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. If, on the other hand, in terminating the services of the employee, the management has acted maliciously or vindictively or has been actuated by a desire to punish the employee for his trade union activities, the Tribunal would be entitled to give adequate protection to the employee by ordering his reinstatement, or directing in his favour the payment of compensation: but if

the enquiry has been proper and the conduct of the management in dismissing the employee is not mala fide, than the Tribunal cannot interfere with the conclusions of enquiry officer, or with the orders passed by the management after accepting the said conclusion."

21. In the case of **Bemco Hydraulics, Ltd. Versus Deputy Labour Commissioner and Conciliation Officer and another** reported in 1960(61) FLR 8, the Hon'ble High Court of Karnataka has observed as under:

"In the present case as the charge discloses, the assault committed by the second respondent workman was purely a private matter as he committed the acts of assaulting the workman who were not supporting the strike, outside of employment. Assault was committed to terrorize the workman outside of employment with a view to force him to work, which acts certainly constitute an act subversive of discipline. It is open to the employer to take disciplinary action against the delinquent workman when the act complained of is not far too remote and unconnected with the employment but one which has casual connection which has link between the alleged conduct of misconduct and employment is real and substantial, immediate and not remote or tenuous, as was noticed by the Supreme court in the case Glaxo Laboratories (India), Ltd. [1985-I L.L.N 57].

22. Among the aforesaid judgments, the principle laid down by the Hon'ble Apex Court in its case of **Mahendra Nissan Allwyns Ltd. (supra)** is applicable to the case in hand. In the instant case, the misconducts proved against the Workman are grave and serious in nature. The Workman was in the services of the Employer for around 8 years. There is no mitigating circumstances by which the Workman is entitled for lesser punishment than his dismissal from service. In my considered opinion, the punishment imposed upon the Workman of dismissal from service is just, fair and proper and proportionate to the proved misconduct. Hence, it is held that Workman failed to prove that the action of the Employer in dismissing him from service w.e.f. 30-04-2014 is illegal and unjustified. The issue No. 3 is therefore answered in the negative.

23. *Issue No. 4:*

The Employer, as and by way of its preliminary objections, submitted that the reference filed by the Workman is bad-in-law, that the present

dispute raised by the Workman is not an 'industrial dispute' as defined under the Industrial Disputes Act, 1947, that there is non-application of mind by the Appropriate Government while referring the present dispute and that the Workman was held guilty of the charges levelled against him by the Enquiry Officer, post an enquiry which was conducted in strict adherence to the principles of natural justice after giving an ample opportunities to the Workman of being heard and for leading evidence. The burden was cast on the Employer to prove its aforesaid allegation.

24. The term 'industrial dispute' has been defined u/s 2 (k) of the I.D. Act, 1947 and it means "*any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.*" In the case in hand, it is not in dispute that the Party I is a 'Workman' within the meaning of Sec. 2 (s) of the I.D. Act, 1947 and the Party II is an Employer within the meaning of Section 2 (j) of the I.D. Act, 1947. Consequently, the present dispute raised by the Workman pertaining to his non-employment w.e.f. 30-04-2014 is an 'industrial dispute' within the meaning of Sec. 2 (k) of the I.D. Act, 1947.

Hence, I do not find any merits in the submissions of the Employer that the reference is not maintainable in law. It is therefore, held that the Employer failed to prove that the present order of reference issued by the Government of Goa is bad-in-law and not maintainable. The issue No. 4 is therefore answered in the negative.

25. *Issue No. 5:*

While deciding the issue No. 3 hereinabove, I have discussed and come to the conclusion that the action of the Employer in dismissing him from service w.e.f. 30-04-2014 is legal and justified. The Workman is therefore not entitled to any relief. The issue No. 5 is therefore answered in the negative.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action the management of M/s. Hindustan Unilever Limited, Plot No. 128-139 & 324-326, Kundaim Industrial Estate, Kundaim, Goa, in dismissing Shri Vishwas Tari, Workman Grade B, with effect from 30-04-2014, is legal and justified.

2. It is held that the Workman, Shri Vishwas Tari, is not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2021-LAB/Part-II/216

The following award passed by the Labour Court-II, at Panaji-Goa on 24-03-2021 in Case No. Ref. LC-II/IT/15/15 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 29th April, 2021.

IN THE LABOUR COURT-II

GOVERNMENT OF GOA

AT PANAJI

(Before **Shri Suresh N. Narulkar, Hon'ble
Presiding Officer**)

Case No. Ref. LC-II/IT/15/15

Shri Mohan Gaunekar,
Rep. by the General Secretary,
Cadila Healthcare
Employees Union,
Kundaim, Ponda-Goa. ... Workman/Party I
V/s

M/s. Cadila Healthcare Ltd.,
Kundaim Industrial Estate,
Kundaim-Goa. ... Employer/Party II

Workman/Party-I represented by Shri Subhash Naik George.

Employer/Party-II represented by Adv. Shri M.S. Bandodkar.

Panaji, Dated: 24-03-2021

AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 14-07-2015, bearing No. 28/39/2015-Lab/707 referred the following dispute for adjudication to this Labour Court-II, Panaji, Goa.

“(1) Whether the action of M/s. Cadila Healthcare Limited, Plot No. 203 to 213, Kundaim Industrial Estate, Kundaim, Goa, in dismissing from service Shri Mohan Gaunekar, Operator, with effect from 24-12-2014, is legal and justified?

(2) If not, what relief the Workman is entitled to?”

2. On receipt of the reference, a case was registered under No. LC-II/IT/15/15 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 03-11-2015 at Exb-4. The facts of the case in brief as pleaded by the Workman are that the Employer/Party II (for short, "Employer") is a pharmaceutical company engaged in the production of tablets/capsules exported all over the world as well as sold in domestic market. He stated that the workers of the Employer are member of a trade union namely Cadila Health Care Employees Union. He stated that he was employed with the Employer since the year 1991. He stated that initially he was working as a temporary worker. He stated that on and from 01-08-1993, he was issued a letter of appointment as its permanent workman and designated as 'Store Attendant' under its erstwhile nomenclature German Remedies Ltd. He stated that he was confirmed in the service with effect from 01-02-1994 by its letter dated 01-02-1994.

3. He stated that he was issued a charge-sheet dated 07-05-2014 alleging unauthorized absence from duty since 16-04-2014. He stated that he replied to the charge-sheet vide his reply dated 29-04-2014 justifying his absence which was found to be unsatisfactory. He stated that vide his letter dated 21-04-2011, he had assured them of not repeating the unauthorized absence. He stated that by the said charge-sheet, the Employer stated that in spite of giving earlier warnings to him vide its letter dated 14-05-2011, 03-08-2012 and 10-10-2013, he continued to remain absent from his duties. He was therefore, charged with wilful insubordination or disobedience of any lawful and reasonable order or (of) a superior, habitual absences without leave and absence without leave for more than fifteen consecutive days without sufficient ground or proper or satisfactory explanation, habitual breach of Standing Order and law applicable to the Establishment and rules made there under, commission of any act subversive of discipline or good behavior on the premises of the establishment or any place outside the premises, poor or

unsatisfactory workmanship. He stated that he had replied to the said charge-sheet dated 07-05-2014, vide his letter dated 09-05-2014 denying the allegations levelled in the charge-sheet. He stated that however, the Employer, having not been satisfied with his reply, conducted an enquiry as per the provisions of Certified Standing Orders. He stated that Adv. Shri S.K. Manjrekar was appointed as an Enquiry Officer. He stated that said Shri S. K. Manjrekar conducted an enquiry and submitted his findings dated 01-10-2014. He stated that thereafter the Employer issued to him a show-cause notice dated 09-10-2014 enclosing there with a copy of the findings of the Enquiry Officer dated 01-10-2014 and sought comments from him on the findings of the Enquiry Officer. He stated that he replied to the above said show-cause notice dated 09-10-2014, vide his letter dated 23-10-2014. He stated that thereafter, the Employer issued to him a dismissal order dated 24-12-2014, thereby dismissing him from service with immediate effect. He stated that aggrieved by the wrongful action of the Employer, he addressed a letter dated 03-01-2015 to the Employer demanding reinstatement in service with full back wages and continuity in service. He stated that, as the Employer did not accept his demand, he raised an industrial dispute before the Asstt. Labour Commissioner, Ponda, which ended in failure.

4. The Workman contended that the action of the Employer in terminating his services is totally vindictive, illegal and unjustified. He submitted that the punishment of dismissal imposed upon him is highly disproportionate even assuming and without admitting that the allegations of unauthorized absenteeism is proved. He submitted that the enquiry conducted against him is in violation of the principles of natural justice as well as in violation of the provisions of the Certified Standing Orders. He submitted that the allegations levelled against him in the charge-sheet dated 07-05-2014 were vague. He submitted that the findings dated 01-10-2014 given by the Enquiry Officer are perverse and not based on evidence on record. He submitted that the charges of absenteeism levelled against him have not been proved in the enquiry at all. He submitted that the punishment of dismissal imposed upon him is highly unjust and disproportionate to the proved misconduct. He submitted that the findings given by the Enquiry Officer are biased and in mechanical manner in favour of the Employer. He submitted that since the date of his wrongful termination, he is unemployed. He submitted that he was drawing a monthly salary of Rs. 27,000/- at the time of

termination of his services. The Workman therefore prayed for reinstatement in service with full back wages and continuity in service with cost.

5. The Employer resisted the claim of the Workman by filing its written statement on 17-12-2015 at Exb. 5. The Employer submitted that the Workman was remaining unauthorizedly absent from duty without permission and information of his superior, therefore he was issued letters dated 08-04-2014 and 25-04-2014. The Employer stated that the Workman replied to the said letters, vide his reply dated 29-04-2014. The Employer stated that however, even thereafter, the Workman continued to remain unauthorizedly absent. The Employer stated that the Workman was issued a charge-sheet dated 07-05-2014. The Employer stated that the Workman filed his reply to the said charge-sheet vide his reply dated 09-05-2014. The Employer stated that since the reply was not found to be satisfactory, the Employer decided to conduct a fair and proper enquiry into the said charge-sheet dated 07-05-2014 by following the principles of natural justice as per its Certified Standing Orders. The Employer stated that, it has held a fair and proper enquiry by following the principles of natural justice and the findings are based on and are arising out of the evidence on record. The Employer stated that since the charges levelled in the charge-sheet are found proved against the Workman, he was issued a show-cause notice dated 09-10-2014. The Employer stated that the Workman filed reply to the said show-cause notice vide his reply dated 23-10-2014. The Employer stated that, having regards to the other past records, it dismissed the Workman from the services vide dismissal letter dated 24-12-2014. The Employer therefore submits that the said termination is fully legal and justified and the Workman is not entitled to any relief as prayed by him. The Employer stated that in any event if this Hon'ble Court comes to the conclusion that the enquiry was not conducted properly or in a fair and proper manner, or that the findings are perverse and/or are not based on the evidence, it crave leave to adduce additional evidence to justify its case of dismissal. The Employer submitted that the union has no locus standi to raise the dispute on behalf of the Workman. The Employer denied the overall case as pleaded by the Workman and prayed for dismissal of the present reference.

6. Thereafter, the union filed its rejoinder on 07-01-2016 at Exb. 06. The Workman, by way of his Re-joinder, confirms and reiterates all his submissions, averments and statements made in

his Claim Statement to be true and correct and denies all the statements, averments and submissions made by the Employer in its Written Statement, which are contrary to its Statement and averments made in its Claim Statement.

7. Based on the pleadings filed by the respective parties, this court framed the following issues at Exb. 9.

1. Whether a fair, proper and impartial enquiry was conducted against the Workman/Party I in respect of charge-sheet dated 07-05-2014 in accordance with the principles of natural justice?
2. Whether the charges of misconduct leveled against the Workman/Party I vide charge sheet dated 07-05-2014 have been proved to the satisfaction of this court by acceptable evidence?
3. Whether the Workman/Party I proves that the action of the Employer in dismissing him from services w.e.f. 24-12-2014 is illegal and unjustified?
4. Whether the Employer/Party II proves that the entire reference is bad-in-law and not maintainable in view of the reasons mentioned in para A to F of the written statement?
5. Whether the Workman/Party I is entitled to any relief?
6. What Order? What award?

8. My answers to the aforesaid issues are as under

- (a) Issue No. 1 : In the Affirmative.
- (b) Issue No. 2 : Partly in the Affirmative and partly in the Negative.
- (c) Issue No. 3 : In the Negative.
- (d) Issue No. 4 : In the Affirmative.
- (e) Issue No. 5 & 6 : As per final order.

I have heard the oral arguments of Ld. Rep. Shri Subhash Naik George, appearing for the Workman as well as Ld. Adv. Shri M.S. Bhandodkar, appearing for the Employer.

9. Ld. Rep. Shri Subhash Naik George, representing the Workman, during the course of his oral arguments submitted that by order dated 23-08-2018, this Hon'ble Court has given findings on the preliminary issue No. 1 and 2 by ordering that a fair, proper and impartial enquiry was conducted against the Workman in accordance with the principles of natural justice in respect of

charge-sheet dated 07-05-2014 and that the charges of misconduct levelled against the Workman have been proved to the satisfaction of this court by the acceptable evidence to the extent of charges of misconduct namely willful insubordination or disobedience of any lawful and reasonable order of superior, habitual breach of standing order and law applicable to the establishment and rules made thereunder, commission of any act subversive of discipline and obtaining or trying to obtain leave under false pretext and the other charges i.e. the charge of habitual absence without leave and absence without leave for more than 15 consecutive days without sufficient ground or proper or satisfactory explanation, habitual breach of standing order and law applicable to the establishment and rules made thereunder, and poor and unsatisfactory workmanship have not been proved to the satisfaction of this court by an acceptable evidence. He submitted that the workman remained unauthorizedly absent since 16-04-2014 till 07-05-2014. He submitted that the Workman cannot be punished for his past misconduct. He submitted that para 2 and 3 of the charge-sheet dated 07-04-2014 has not been proved in the enquiry held against the Workman. Hence, no punishment can be imposed. He submitted that the Workman could not attend duties due to reason beyond his control and his absenteeism was not willful and hence, the Employer cannot dismiss him from service. He submitted that the punishment imposed on the Workman is shockingly disproportionate to the proved misconduct. He submitted that the Workman is unemployed from the date of his dismissal from service and as such he is entitled for reinstatement in service with full back wages and consequential benefits thereof. In support of his contention, he relied upon two judgments, one is of Hon'ble Apex Court in the case of **Krushnakant B. Parmar v/s. Union of India and Anr.**, reported in 2012I CLR 753 and another in the case of **Gujrat State Road Transport v/s. Maganlal Bhikhabhai Raval**, reported in (2003) 4 GLR 3575 of Hon'ble High Court of Gujrat.

10. Per contra, Ld. Adv. Shri M.S. Bhandodkar, representing the Employer submitted that by order dated 23-08-2018, this Hon'ble Court has given findings on the preliminary issue No. 1 and 2 by ordering that a fair, proper and impartial enquiry was conducted against the Workman in accordance with the principles of natural justice in respect of charge-sheet dated 07-05-2014 and that the charges of misconduct levelled against the Workman have been proved to the satisfaction of

this court by the acceptable evidence to the extent of charges of misconduct namely willful insubordination or disobedience of any lawful and reasonable order of superior, habitual breach of standing order and law applicable to the establishment and rules made thereunder, commission of any act subversive of discipline and obtaining or trying to obtain leave under false pretext and the other charges i.e. the charge of habitual absence without leave and absence without leave for more than 15 consecutive days without sufficient ground or proper or satisfactory explanation, habitual breach of standing order and law applicable to the establishment and rules made thereunder, and poor and unsatisfactory workmanship have not been proved to the satisfaction of this court by an acceptable evidence. He submitted that the workman remained unauthorizedly absent since 16-04-2014 till 07-05-2014.

11. He submitted that in the past, the Workman was issued a show cause notice dated 31-12-2009 pertaining to his absenteeism without intimation from duty from 25-11-2009 till issuing the said letter. He submitted that by letter dated 18-01-2010, the Workman admitted the said fact as stated in the show cause notice dated 31-12-2009 and apologized for his acts of misconducts. He submitted that the Workman as well as the union had assured the management not to repeat the said misconduct in future. He submitted that vide another show-cause notice dated 13-04-2010, the Workman was directed to explain in writing within 48 hours from the receipt of the said notice as to why the disciplinary action should not be taken against him for his unauthorized absence from 18-03-2010 till issuance of the said notice. He further submitted that in pursuance to the said show-cause notice dated 13-04-2010, the union, vide its letter dated 05-06-2010 addressed to the Employer admitted the misconduct of the Workman and again assured the management that the Workman would not remain absent unauthorizedly and that the union will not interfere in case of any future misconduct on the part of the Workman. He submitted that the Workman, vide its letter dated 09-06-2010, admitted his mistakes and assured the management that he will be regular and punctual in his duties henceforth. He submitted that the Workman was issued a charge-sheet dated 19-02-2011 alleging the misconduct of habitual absence without leave and absence without leave for more than 15 consecutive days without sufficient ground and proper and satisfactory explanation, habitual breach of standing orders and law applicable to

the establishment and rules made thereunder and commission of any act subversive of discipline or good behaviour. He submitted that the enquiry was held in respect of the said charge-sheet dated 19-02-2011 by appointing Shri A.M. Gaikwad as Enquiry Officer. He submitted that the Enquiry Officer, Shri A. M. Gaikwad, submitted his findings dated 28-03-2011, holding that the charges levelled against the Workman as stated therein have been proved. He submitted that the Workman was also issued final show-cause notice dated 13-04-2011 on the proposed punishment of dismissal. He submitted that in pursuance to the said show-cause notice dated 13-04-2011, the Workman filed his reply dated 21-04-2011. He submitted that vide letter dated 14-05-2011 addressed to the Workman, the management informed the Workman that his explanation is found to be unsatisfactory and that taking into consideration the gravity of his misconduct, the management could have dismissed him from their services, however, to give him a final opportunity to improve his behaviour, it was decided to take a lenient view this time and lighter punishment of two days suspension w.e.f. 16-05-2011 to 17-05-2011 was imposed upon him and he was cautioned that his future behaviour would be observed and monitored in the future and if they observe that there is no improvement in his behaviour, strict disciplinary action would be taken against him. He submitted that vide letter dated 03-08-2012, the management had issued a show-cause notice to the Workman for his absenteeism without intimation. He submitted that vide his letter dated 09-08-2012, he had replied to the show-cause notice dated 03-08-2012 and undertook not to repeat his mistake. He submitted that vide show-cause notice dated 22-09-2012, the Workman was directed to explain his unauthorized absenteeism from 03-09-2012 till issuance of the said show-cause notice. He submitted that the Employer, vide its show-cause notice dated 05-02-2013 directed the Workman to explain his absenteeism from duty without intimation since 06-12-2013 till issuance of the said show-cause notice. He submitted that by letter dated 27-02-2013 addressed to the Employer, the Workman tried to justify his absenteeism without intimation by stating that he is suffering from infertility problem and is undergoing treatment for the same and that his neighbour created some problem. He submitted that the Employer, vide its letter dated 10-10-2013, advised the Workman to improve his

unauthorized absenteeism from duty without prior permission by pointing out his unauthorized absence from 04-04-2013 till 09-10-2013 for a period of 27 days and his absenteeism is a misconduct and sudden unauthorized absenteeism is disrupting the production plant and causing loss to them. He submitted that thus the past records of the Workman is full of misconducts of habitual unauthorized absenteeism. He submitted that the management, having proved the grave and serious misconduct on the part of the Workman and considering his past record, dismissed the Workman from services vide its order dated 24-12-2014. He submitted that the punishment of dismissal imposed on the Workman is proportionate to the proved misconduct taking into account his past record. He therefore submitted that the action of the Employer in dismissing the services of the Workman w.e.f. 24-12-2014 is just and legal and the reference be answered accordingly. In support of his oral contention, Ld. Adv. M. S. Bandodkar relied upon judgment in the case of **P. M. Raju v/s. P.O. Labour Court, Madurai and Anr., reported in 2002 LLR 220** of Hon'ble High Court of Madras.

I have carefully perused the entire records of the present case. I have also carefully considered the legal submissions advanced by Ld. Rep. Shri Subhash Naik as well as Ld. Adv. Shri M.S. Bandodkar and is of the considered opinion as under.

REASONS

12. Issue No. 1 and 2:

By order dated 23-08-2018 passed in my findings on the preliminary issue No. 1 and 2, I have discussed and come to the conclusion that a fair, proper and impartial enquiry was conducted against the Workman in accordance with the principles of natural justice in respect of charge-sheet dated 07-05-2014 and that the charges of misconduct levelled against the Workman have been proved to the satisfaction of this court by the acceptable evidence to the extent of charges of misconduct namely willful insubordination or disobedience of any lawful and reasonable order of superior, habitual breach of standing order and law applicable to the establishment and rules made thereunder, commission of any act subversive of discipline and obtaining or trying to obtain leave under false pretext and the other charges i.e. the charge of habitual absence without leave and absence without leave for more than 15 consecutive days without sufficient ground or proper or satisfactory explanation, habitual breach of

standing order and law applicable to the establishment and rules made thereunder, and poor and unsatisfactory workmanship have not been proved to the satisfaction of this court by an acceptable evidence. The issue No. 1 is therefore answered in the affirmative and issue No. 2 is partly answered in the affirmative and partly in the negative.

13. Issue No. 3 and 4:

The Workman filed his statement of claim in the present matter which is on record at Exb. 4. It appears from the claim statement of the Workman on record that he challenged his dismissal from service mainly on the ground that the enquiry conducted against him is in violation of principles of natural justice as well as in violation of the Certified Standing Orders, proving of the charges of misconduct levelled against him and punishment imposed upon him is highly unjust and disproportionate to the proved misconduct.

14. While deciding the issue No. 1 herein above, I have discussed and come to the conclusion that a fair, proper and impartial enquiry was conducted against the Workman in accordance with the principles of natural justice in respect of charge-sheet dated 07-05-2014. Similarly, while deciding the issue No. 2 herein above, I have discussed and come to the conclusion that the charges of misconduct levelled against the Workman have been proved to the satisfaction of this court by the acceptable evidence to the extent of charges of misconduct namely willful insubordination or disobedience of any lawful and reasonable order of superior, habitual breach of standing order and law applicable to the establishment and rules made thereunder, commission of any act subversive of discipline and obtaining or trying to obtain leave under false pretext and the other charges i.e. the charge of habitual absence without leave and absence without leave for more than 15 consecutive days without sufficient ground or proper or satisfactory explanation, habitual breach of standing order and law applicable to the establishment and rules made thereunder, and poor and unsatisfactory workmanship have not been proved to the satisfaction of this court by an acceptable evidence.

15. The evidence on record indicates that in the past, the Workman was issued a show cause notice dated 31-12-2009 pertaining to his absenteeism from duty from 25-11-2009 till issuing the said letter without intimation. The evidence on record indicates that by letter dated 18-01-2010, the

Workman admitted the said fact as stated in the show cause notice dated 31-12-2009 and apologized for his acts of misconducts. The evidence on record indicates that the Workman as well as the union had assured the management not to repeat the said misconduct in future. The evidence on record indicates that vide another show-cause notice dated 13-04-2010, the Workman was directed to explain in writing within 48 hours from the receipt of the said notice as to why the disciplinary action should not be taken against him for his unauthorized absence from 18-03-2010 till issuance of the said notice. The evidence on record indicates that in pursuance to the said show-cause notice dated 13-04-2010, the union, vide its letter dated 05-06-2010 addressed to the Employer, admitted the misconduct of the Workman and again assured the management the Workman would not remain absent unauthorizedly and that the union would not interfere, in case of any future misconduct on the part of the Workman. The evidence on record indicates that the Workman, vide its letter dated 09-06-2010, admitted his mistakes and assured the management that he will be regular and punctual in his duties henceforth. The evidence on record indicates that the Workman was issued a charge-sheet dated 19-02-2011 alleging the misconduct of habitual absence without leave and absence without leave for more than 15 consecutive days without sufficient ground and proper and satisfactory explanation, habitual breach of standing orders and law applicable to the establishment and rules made thereunder and commission of any act subversive of discipline or good behaviour. The evidence on record indicates that the enquiry was held in respect of the said charge-sheet dated 19-02-2011 by appointing Shri A.M. Gaikwad as Enquiry Officer. The evidence on record indicates that the Enquiry Officer, Shri A.M. Gaikwad, submitted his findings dated 28-03-2011, holding that the charges levelled against the Workman as stated therein have been proved. The evidence on record indicates that the Workman was also issued final show-cause notice dated 13-04-2011 on the proposed punishment of dismissal. The evidence on record indicates that in pursuance to the said show-cause notice dated 13-04-2011, the Workman filed his reply dated 21-04-2011. The evidence on record indicates that vide letter dated 14-05-2011 addressed to the Workman, the management informed the Workman that his explanation is found to be unsatisfactory and that taking into consideration the gravity of his misconduct, the management could have dismissed him from their services, however, to give

him a final opportunity to improve his behaviour, it was decided to take a lenient view this time and lighter punishment of two days suspension w.e.f. 16-05-2011 to 17-05-2011 was imposed upon him and he was cautioned that his future behaviour would be observed and monitored in future and if they observe that there is no improvement in his behaviour, strict disciplinary action would be taken against him. The evidence on record indicates that vide letter dated 03-08-2012, the management had issued a show-cause notice to the Workman for his absenteeism without intimation. The evidence on record indicates that vide his letter dated 09-08-2012, he had replied to the show-cause notice dated 03-08-2012 and he undertook not to repeat his mistake. The evidence on record indicates that vide show-cause notice dated 22-09-2012, the Workman was directed to explain his unauthorized absenteeism from 03-09-2012 till issuance of the said show-cause notice. The evidence on record indicates that the Employer, vide its show-cause notice dated 05-02-2013, directed the Workman to explain his absenteeism from duty without intimation since 06-12-2013 till issuance of the said show-cause notice. The evidence on record indicates that by letter dated 27-02-2013 addressed to the Employer, the Workman tried to justify his absenteeism without intimation by stating that he is suffering from infertility problem and is undergoing treatment for the same and that his neighbour created some problem. The evidence on record indicates that the Employer, vide its letter dated 10-10-2013, advised the Workman to improve his unauthorized absenteeism from duty without prior permission by pointing out his unauthorized absence from 04-04-2013 till 09-10-2013 for a period of 27 days and his absenteeism is a misconduct and sudden unauthorized absent is disrupting the production plant and causing loss to them. The evidence on record thus indicates that the past records of the Workman is full of blemished misconducts of habitual unauthorized absenteeism.

16. In the case of **Kamalakant B. Parmar (supra)**, the Hon'ble Apex Court set aside the dismissal order of the Employer on the ground that there was no clear findings in the enquiry report that the employee's absence was wilful by observing as under:

"18. Absence from duty without any application or prior permission may amounts to unauthorized absence, but it does not always mean wilful, there may be different eventuality due to which an employee may abstain from

duty including compelling circumstances beyond his control like illness, accident, hospitalization etc. but in such cases, the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant”.

The principle laid down by the Hon'ble Apex Court is not applicable to the case in hand as the unauthorized absence of the Workman is habitual.

17. Ld. Rep. Shri Subhash Naik, representing the Workman submitted that the Employer cannot dismiss the Workman on the basis of his past records and relied upon a judgment of **Gujrat State Road Transport(Supra)**. In the said case, the Hon'ble High Court of Gujrat observed as under:

“This past record of service is evidently not material on record as visualized in the proviso to Section 11A. Therefore, the question is, would the Tribunal have come to the same conclusion, viz., that the order or removal is justified had it not looked into the past record of the petitioner. Suffice it to state that from the manner in which the award has been passed, it is easy to see that a lot of emphasis has been placed on the past record of service of the petitioner. The approach of the Industrial Tribunal was clearly wrong only on the basis of the appreciation of the material on record and not by taking into consideration the past record of service of the petitioner. In this view of matter, the award dated April 3, 1987, passed by the Labour Court in I.D. No. 141 of 1986 is set aside and the matter is remanded to the Industrial Tribunal for fresh consideration in accordance with the provisions of Section 11A of the Industrial Disputes Act especially the proviso to the said Section, by taking into consideration only the material on record and not the past record of service of the petitioner. The Labour Court may consider the matter and pass an award within two months from the date of receipt of this order.

12. Therefore, there is no substance in this petition and the same is rejected at the threshold. No order as to costs.”

The principle laid down by the Hon'ble High Court of Gujrat is not applicable to the case in hand as the facts of the present case are totally different.

18. In the case of **P. M. Raju (supra)**, the Hon'ble High Court of Madras in para 14 of its judgment held as under:

“14. As stated above and also as seen from the past records, as adverted to, in the award of

*the Labour Court, it cannot be considered that the petitioner is a person not habitually absenting himself from duty in spite of imposition of minor punishments on five earlier occasions and in spite of issuance of charge memo. The Labour court found as a matter of fact the petitioner is guilty of unauthorized and unjustified absence. Such a finding of fact cannot be easily brushed aside or interfered with, particularly, in the facts and circumstances of the case. The discretion vested under S.11A is not meant to be equated to charity as held by **R. Jayasimhababu, J. in 1998 (1) LLN 710** referred supra and the finding of the Labour Court cannot be interfered with by this court unless it is perverse or based on no evidence, while exercising the power under Art. 226 of the Constitution of India, which position requires no authority. For all the above said reasons, I am of the clear view that the writ petition deserves no merits and it has to be dismissed.”*

The principle laid down by the Hon'ble High Court of Madras is applicable to the case in hand.

19. The Workman is governed by Certified Standing Order (CSO). Clause 49 (i) of the CSO provides for disciplinary action and reads as “a workman found guilty of any misconduct may be awarded the following punishment namely: warning or censure or imposition of fine subject to or in accordance with the provisions of payment of wages Act, suspension without wages and/or other benefits by an order in writing for a period not exceeding 15 days, withholding one or more increments, reduction to lower post or time scale or to a lower stage in the same time scale, discharging from service and removal or dismissal from service without notice or wages in lieu of such notice. Clause 49 (iii) of the CSO provides that no order of dismissal under Clause i (f) and i (g) supra shall be made, except after holding departmental enquiry against the workman concerned in respect of the alleged misconducts in the manner set forth in sub-clause (iv) below. Clause 49 (vii) of the CSO provides that in awarding punishment under standing orders, the manager shall take into consideration the gravity of misconduct, and/or the previous records of the workman and/or any other extenuating and/or aggravating circumstance that may exist.

20. In the case in hand, the misconduct proved against the Workman are willful insubordination or disobedience of any lawful and reasonable order of superior, habitual breach of standing order and law applicable to the establishment and rules made

thereunder, commission of any act subversive of discipline and obtaining or trying to obtain leave under false pretext. The Employer also referred the past misconduct of the workman in a charge-sheet dated 07-05-2014 as well as final show-cause notice dated 09-10-2014 (Exb.13-cross) issued to the Workman. In the past, the Workman was also found guilty of misconduct for habitual misconduct without leave and absence without leave for more than 15 consecutive days without sufficient ground and proper and satisfactory explanation etc. Thus, taking into consideration the gravity of proved charges of misconduct as well as previous records of the Workman and the extenuating factors, the punishment of dismissal from service imposed upon him is just, fair and proper and proportionate to the proved misconduct. Hence, it is held that the Workman failed to prove that the action of the Employer in dismissing him from service with effect from 24-12-2014 is illegal and unjustified. The issue No. 3 is therefore answered in the negative and issue No. 4 is answered in the affirmative.

21. Issue No. 5:

While deciding the issue No. 3 hereinabove, I have discussed and come to the conclusion that the Workman failed to prove that the action of the Employer in dismissing him from service w.e.f. 24-12-2014 is illegal and unjustified. The Workman is therefore not entitled to any relief. The issue No. 5 is therefore answered in the negative.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of M/s. Cadila Healthcare Limited, Plot No. 203 to 213, Kundaim Industrial Estate, Kundaim, Goa, in dismissing from service Shri Mohan Gaunekar, Operator, with effect from 24-12-2014, is legal and justified.
2. It is held that the Workman, Shri Mohan Gaunekar, is not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2021-LAB/Part-II/215

The following award passed by the Labour Court-II, at Panaji-Goa on 30-03-2021 in Case

No. Ref. LC-II/IT/01/2021 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 29th April, 2021.

IN THE LABOUR COURT-II

GOVERNMENT OF GOA
AT PANAJI

(Before **Shri Suresh N. Narulkar**, Hon'ble
Presiding Officer)

Case No. Ref. LC-II/IT/01/2021

Shri Shrikant B. Sarnaik,
R/o. H. No.195, Ambegal,
Pale, Bicholim-Goa. ... Workman/Party-I

V/s

M/s. Vaibhavi Shipping Pvt. Ltd.,
Shop No. 5 to 13, 1st floor,
Opp. KTC Bus stand, Mundvel,
Vasco-da-Gama, Goa. ... Employer/Party-II

Party-I/Workman present in person.

Party-II/Employer represented by Adv. Shri Firoz Khilji.

Panaji, dated: 30-03-2021

AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 29-01-2021, bearing No. 28/24/2020-LAB/43 referred the following dispute for adjudication to this Labour Court-II, Panaji-Goa.

“(1) *Whether the action of the management of M/s. Vaibhavi Shipping Private Limited, Karma Express, Shop No. 5 to 13, 1st Floor, Opp. KTC Bus Stand, Mundvel, Vasco-da-Gama, in refusing employment to Shri Shrikant B. Sarnaik, Sukani, with effect from 01-06-2012, is legal and justified?*

(2) *If not, what relief the workman is entitled to?”*

2. On receipt of the reference, a case was registered under No. LC-II/IT/01/2021 and registered A/D notice was issued to the Parties. In pursuance to the notice, both the Parties remained absent. This court has however, received two letters, one from the Employer/Party II (for short,

"Employer") and another from the Workman/Party-I (for short 'Workman') which are exhibited as Exb. 3 and Exb. 5 respectively, intimating the settlement signed by them. Both the said letters are supported by a copy of memorandum of settlement dated 05-02-2021 duly signed between the parties hereinabove and executed before Smt. Varsha N. Valvoikar, Advocate and Notary for South Goa. Both the parties prayed for the withdrawal of the reference hereinabove, in terms of the settlement signed by them. The terms of settlement signed between the parties hereinabove are reproduced hereunder:

1. It is agreed between the employer and the employee that the management of M/s. Vaibhavi Shipping Pvt. Limited (Employer), Vasco-da-Gama, Goa shall pay a sum of Rs. 3,50,000/- (Rupees three lakhs and fifty thousand only) to Shri Shrikant Bhanu Sarnaik (Employee) towards full and final settlement of legal dues (i.e. Retrenchment compensation/gratuity/bonus/balance wages/leave encashment etc. benefits) for the entire period of his employment (w.e.f. 1997 to 2012) with the Employer.
2. The Employer agreed to pay the settlement amount of Rs. 3,50,000/- (Rupees three lakhs fifty thousand only) to the employee in 5 Nos. of monthly installments as under:
 - (i) First installment: On the date of execution of this agreement by cheque No. 001378 dated 05-02-2021 for a sum of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only) in favour of employee drawn on ICICI Bank, Vasco Branch by the Employer (subject to realization).
 - (ii) Second installment: By Cheque No. 001379 dated 01-03-2021 for a sum of Rs. 50,000/- (Rupees fifty thousand only) in favour of employee drawn on ICICI Bank, Vasco Branch by the Employer (subject to realization).
 - (iii) Third installment: By Cheque No. 001380 dated 01-04-2021 for a sum of Rs. 50,000/- (Rupees fifty thousand only) in favour of the employee drawn on ICICI Bank, Vasco Branch by the Employer (subject to realization).
 - (iv) Fourth installment: By Cheque No. 001381 dated 01-05-2021 for a sum of Rs. 50,000/- (Rupees fifty thousand only) in favour of the employee drawn on ICICI Bank, Vasco Branch by the Employer (subject to realization).
 - (v) Fifth installment: By Cheque No. 001382 dated 01-06-2021 for a sum of Rs. 50,000/- (Rupees fifty thousand only) in favour of the employee drawn on ICICI Bank, Vasco Branch by the Employer (subject to realization).
3. Employee will forgo all his claims in respect of said legal dues including re-employment, reinstatement with back wages, etc. in all respects after execution of this settlement and shall not claim any thing over and above the amount being paid under this settlement. All his other claims are treated to be withdrawn and forgone.
4. The present settlement shall be treated as a settlement under Section 18 of the Industrial Disputes Act and company shall be at liberty to file the same before the authorities concerned and the employee shall, forthwith intimate the concerned authorities including the Office of Appropriate Government and the Labour Court-II, Panaji, Goa regarding the resolution of all his claims & disputes vide this settlement by way of written communication with a copy marked to the Company.
5. The employees shall fully co-operate and assist the Company incase any reference or litigation has been initiated by the concerned authorities before Labour Court or any other forum, in order to withdraw the same pursuant to amicable resolution of all his claims & disputes under this settlement.
6. It is agreed by and between the Company and the employee that this Agreement shall be valid subject to realization of aforesaid post-dated cheques in terms of Clause 2 above.
7. That all the complaints, claims and disputes made by the employee shall be treated as withdrawn, forthwith and the Company may place this settlement agreement before the authorities concerned to close any proceedings initiated on the complaint of the employee.
8. On execution of this Settlement, the employee shall waive all its claims (past, present and future) against the Company of whatsoever nature. This Settlement shall supersede all other agreements, contracts, employment terms, etc. between the parties.

I have carefully perused the said terms of settlement at Exb. 3 and Exb. 5 respectively signed by and between the Employer and the Workman hereinabove. The said terms of settlement are

beneficial to both the parties. Hence, I consented for the same. Since the dispute under reference is settled between the parties, I hold that the dispute under present reference, does not survive.

In view of the above, I proceed to pass the following order:

ORDER

1. In view of the amicable settlement between the Parties, it is held that the reference as to whether the action of M/s. Vaibhavi Shipping Private Limited, Karma Express, Shop No. 5 to 13, 1st Floor, Opp. KTC Bus Stand, Mundvel, Vasco-da-Gama, in refusing employment to Shri Shrikant B. Sarnaik, Sukani, with effect from 01-06-2012, is legal and justified, does not survive.
2. The Workman, Shrikant B. Sarnaik, is not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

Department of Law & Judiciary

Law (Establishment) Division

Addendum

No. 2-3-2020-LD (Estt.)/1024

- Read: (i) Order No. 2-3-2020-LD (Estt.)/1772 dated 03-11-2020.
- (ii) Corrigendum No. 2-3-2020-LD (Estt.)/366 dated 15-02-2021.
- (iii) Addendum No. 2-3-2020-LD (Estt.)/574 dated 09-03-2021.

In the above read Order, the following lines shall be added to the 3rd para in the 6th line after fourth word:-

"The officers promoted on regular basis to Civil Registrar-cum-Sub Registrar are entitled for pay and allowances from the date of accepting the promotion in relaxation to F.R. 17 (1).

Shri Piedade Dias, Civil Registrar-cum-Sub Registrar will draw salary against the post of Joint Civil Registrar-cum-Sub Registrar, District Registrar, South w.e.f. 04-11-2020 to 13-11-2020 i.e. from the date of acceptance till the date prior to joining the post of Civil Registrar-cum-Sub Registrar, Sanguem."

All the remaining contents in the above read Order shall remain unchanged.

This issues in supersession to Addendum No. 2-3-2020-LD (Estt.)/574 dated 09-03-2021.

By order and in the name of the Governor of Goa.

Amir Y. Parab, Under Secretary (Law-Estt.).

Porvorim, 19th May, 2021.

Department of Panchayati Raj and
Community Development
Directorate of Panchayats

Corrigendum

No. 15/2/DP/EST/AE-Promotion/2018/3369

- Read: 1. Order No. 15/2/DP/EST/AE-Promotion/2018/3153 dated 18-06-2019, of this Directorate.
2. Order No. 15/2/DP/EST/AE-Promotion/2018/5639 dated 20-08-2020, of this Directorate.

In the above referred Order at Sr. No. 2, Para No. 8 be deleted and read as under:

"Now, therefore, based on recommendations of the DPC held on 14-05-2019 conveyed by GPSC vide its letter No COM/II/11/69(1)/16/69 dated 15-05-2019, subsequent letter of GPSC vide No. COM/II/11/69(1)/16 dated 16-07-2020 and approval dated 08-08-2020 of the Government and in partial modification of the Order read in preamble, the Governor of Goa is pleased to promote, appoint and fix the pay of Shri Sandeep Apule, Junior Engineer promoted to Assistant Engineer, Group 'B' Gazetted on regular basis in Pay Matrix Level 7 under the seventh pay commission w.e.f. 18-06-2019 with consequential monetary benefits and place him in the promotion order read in the preamble in the following order:"

Sr. No.	Name of officer and position in promotion order
1.	Smt. Vaidehi D. Shirodkar.
2.	Shri Sandeep G. Apule.
3.	Shri Ashish D. Patnekar.
4.	Shri Vasant H. Parab.
5.	Smt. Saloni Zarapkar.
6.	Shri Ajit A. Jog.
7.	Shri Marvando J. Mascarenhas.
8.	Shri Saeesh S. Parab.

Other contents of the said order remains unchanged.

By order and in the name of the Governor of Goa.

Siddhi Halarnakar, Director & ex officio Joint Secretary (Panchayats).

Panaji, 25th May, 2021.

Department of Personnel

Order

No. 4/3/2015-PER/1219

Read: (i) Order No. 7/3/92-PER dated 30-06-2015.
(ii) Order No. 7/3/92-PER/2154 dated 19-07-2017.

Sanction of the Government is hereby conveyed for pay fixation of Dr. Santosh V. Desai, Dy. Director of Animal Husbandry & Veterinary Services in the Pay Scale of Rs. 15600-39100 + Grade pay of Rs. 7600/- for holding the post of Director of Animal Husbandry & Veterinary Services on officiating basis in terms of F.R. 49(i) with effect from 01-07-2015 to 18-07-2017.

This issues with the concurrence of Finance (R&C) Department, vide their U.O. No. 1400023415 dated 10-04-2021.

By order and in the name of the Governor of Goa.

Vishal C. Kundaikar, Under Secretary (Personnel-I).

Porvorim, 18th May, 2021.

Order

No. 15/2/2020-PER/1215

On the recommendations of Goa Services Board, the Governor of Goa is pleased to transfer the following officers in the Cadre of Mamlatdar/Joint Mamlatdar/Assistant Director of Civil Supplies in public interest with immediate effect:-

Sr. No.	Name	Present posting	Posted as
1	2	3	4
1.	Shri Ranjeet R. Salgaonkar	Awaiting posting	Jt. Mamlatdar-II, Pernem.
2.	Kum. Maria G. Cynthia Gomes	Awaiting posting	Jt. Mamlatdar-I, Bardez with additional charge of Jt. Mamlatdar-VI, Bardez.
3.	Smt. Seema S.S. Gudekar	Awaiting posting	Jt. Mamlatdar-III, Ponda.
4.	Smt. Janavi Kalekar	Jt. Mamlatdar-III, Ponda	Jt. Mamlatdar-I, Sanguem with additional charge of Jt. Mamlatdar-II, Sanguem.

1	2	3	4
5.	Kum. Ana Rita Maria Paes	Jt. Mamlatdar-I, Sanguem with additional charge of Jt. Mamlatdar-II, Sanguem	Jt. Mamlatdar-V, Salcete.
6.	Smt. Maria D'Costa e Fernandes	Awaiting posting	Jt. Mamlatdar-III, Mormugao with additional charge of Jt. Mamlatdar-II, Mormugao.

The Officers shall complete handing over and taking over process with immediate effect and submit compliance.

By order and in the name of the Governor of Goa.

Vishal C. Kundaikar, Under Secretary (Personnel-I).

Porvorim, 18th May, 2021.

Order

No. 6/13/2017-PER/1269

On the recommendation of the Goa Services Board, the Governor of Goa is pleased to order the transfer and posting of the following Officers of Goa Civil Service, in public interest, with immediate effect:-

Sr. No.	Name and present posting of the officer	Posted as
1.	Smt. Anju S. Kerkar, Director (Admn.), Water Resources Department	Joint Secretary (GA).
2.	Ms. Biju R. Naik, Joint Secretary (GA)	Director (Admn.), Water Resources Department.

The Officers shall complete handing over and taking over process with immediate effect and submit compliance.

By order and in the name of the Governor of Goa.

Vishal C. Kundaikar, Under Secretary (Personnel-I).

Porvorim 26th May, 2021.

Order

No. 6/13/2017-PER/1143

The Governor of Goa is pleased to post the following officers, in public interest, with immediate effect for better management of the COVID crisis:

1. Smt. Ankita Anand, IAS, Director, IT and CEO Start Up Promotion Cell in addition to her regular duties is posted as Additional Collector, North Goa, in addition to existing Additional Collectors.
2. Shri Mekala Chaitanya Prasad, IAS, Special Secretary (Home, Vigilance & Personnel) in addition to his regular duties is posted as Additional Collector, South Goa, in addition to existing Additional Collectors.
3. Shri Narayan Gad, M.D., GHRSSIDC in addition to his regular duties is posted as Additional Collector, North Goa, in addition to existing Additional Collectors.
4. Shri Kuldeep Arolkar, Deputy Director (Admn.), Electricity Department, in addition to his existing duties, is posted as OSD to Collector, North Goa for COVID related duties.
5. Shri Dipak Desai, Director, Skill Development & Entrepreneurship in addition to his existing duties, is posted as OSD to Collector, South Goa for COVID related duties.
6. Shri Johnson B. Fernandes, Director of Settlement and Land Records, in addition to his existing duties, is posted as OSD to Collector, South Goa for COVID related duties.
7. Shri Ashutosh Apte, State Registrar-cum-Head of Notary Services, in addition to his existing duties, is posted as OSD to Collector, South Goa for COVID related duties.
8. Shri Arvind Khutkar, Registrar of Co-operative Societies, in addition to his existing duties is posted as OSD to Collector, North Goa for COVID related duties.

By order and in the name of the Governor of Goa.

Vishal C. Kundaikar, Under Secretary (Personnel-I).
Porvorim 04th May, 2021.

Order

No. 6/10/2017-PER/Part/1243

Read: Order No. 6/11/2019-PER/1160 dated 10-05-2021.

In pursuance to Promotion Order dated 10-05-2021 read in the preamble and on the

recommendation of the Goa Services Board, the Governor of Goa is pleased to transfer and post Shri Francisco X. L. Ferrao, Senior Scale Officer of Goa Civil Service as General Manager, Tool Room Training Centre, Kundaim with immediate effect in public interest, thereby relieving Smt. Darshana Narulkar, General Manager (DIC), Directorate of Industries, Trade and Commerce of the additional charge.

Shri Ferrao shall continue to hold the charge of the post of Forest Settlement Officer, South, Quepem until further orders.

Shri Ferrao shall draw salary against the vacant post of "Leave & Training Reserve" and shall be governed by the standard terms of deputation as amended from time to time.

The officers shall complete handing over and taking over process with immediate effect and submit compliance.

By order and in the name of the Governor of Goa.

Vishal C. Kundaikar, Under Secretary (Personnel-I).
Porvorim, 10th May, 2021.

Order

No. 6/13/2017-PER/1242

Read: Order No. 6/13/2017-PER/851 dated 30-03-2021.

The posting of Smt. Laura Britto e Madre de Deus, Secretary, State Police Complaints Authority as Secretary, Goa Rehabilitation Board and of Smt. Irene Vitoria Sequeira, Secretary, Goa Rehabilitation Board as Secretary, State Police Complaints Authority indicated at Sr. No. 10 and Sr. No. 13 respectively, in the order read in preamble shall be kept in abeyance until further orders.

By order and in the name of the Governor of Goa.

Vishal C. Kundaikar, Under Secretary (Personnel-I).
Porvorim, 21st May, 2021.

Notification

No. 7/3/2019-PER/1268

- Read: 1. Notification No. 7/3/2019-PER/2347 dated 06-10-2020.
2. Notification No. 7/21/2017-PER/299 dated 29-01-2021.
3. Notification No. 7/21/2017-PER/302 dated 29-01-2021.

4. Notification No. 7/3/2019-PER/685 dated 09-03-2021.
5. Notification No. 7/3/2019-PER/730 dated 15-03-2021.
6. Notification No. 7/3/2019-PER/1191 dated 12-05-2021.

In partial modification to the Notification read in preamble, the Governor of Goa is pleased to order the allocation of work/Departments amongst the Secretaries to the Government as follows, with immediate effect:

Sr. No.	Name and designation	Department
1.	Shri P. S. Reddy, IAS (2003), Commissioner-cum-Secretary (Ports)	1. Ports. 2. River Navigation. 3. Fisheries. 4. Archeology. 5. Archives. 6. Legal Metrology.
2.	Shri Chokha Ram Garg, IAS (2008), Secretary (Law & Judiciary and Legislative Affairs)	1. Law & Judiciary and Legislative Affairs. 2. Skill Development & Entrepreneurship. 3. Co-operation.
3.	Shri Ravi Dhawan, IAS (2011), Secretary (Health)	1. Health. 2. M.D. & CEO, Imagine Panaji Smart City Development Ltd.
4.	Shri Y. V. V. J. Rajasekhar, IAS (2012), Secretary (General Administration)	1. General Administration. 2. Social Welfare. 3. Women & Child Development. 4. Protocol. 5. Museum. 6. Goa Gazetteer. 7. Printing & Stationery.

By order and in the name of the Governor of Goa.

Vishal C. Kundaikar, Under Secretary (Personnel-I).
Porvorim 26th May, 2021.

Corrigendum

No. 5/2/2017-PER/1149

Read: Transfer Order No. 5/2/2017-PER/1136 dated 03-05-2021.

In the order referred to in the preamble, the post mentioned at Sr. No. 3 against the name of

Shri Sachin Desai be read as 'OSD in Imagine Panaji Smart City Development Ltd. (IPSCDL)' with additional charge of OSD, RERA' instead of 'Assistant Commissioner of Commercial Taxes with additional charge of OSD in Imagine Panaji Smart City Development Ltd. (IPSCDL)'.

Further, the words 'with additional charge of Deputy Collector (DRO), South' against the name of Shri Ramesh Gaonkar at Sr. No. 5 shall be deleted.

Also, the post mentioned at Sr. No. 8 against the name of Shri P. A. Parab shall be corrected to read as 'Deputy Director-III, Mines' instead of 'Deputy Director (Admn.), Mines'.

The other contents of the Order remain unchanged.

Vishal C. Kundaikar, Under Secretary (Personnel-I).
Porvorim, 04th May, 2021.

Department of Power

Office of the Chief Electrical Engineer

Order

No. CEE/Estt./CGRF/22-03-10/Recruit/585

In pursuance to the approval conveyed by the Joint Electricity Regulatory Commission (JERC) vide letter No. JERC/E-50II/2/2020-E/31 dated 09-04-2021, Government is pleased to appoint Shri Ashley L. C. Noronha to the post of "Chairperson" on the Consumer Grievances Redressal Forum (CGRF), Government of Goa under the provisions of Joint Electricity Regulatory Commission for the State of Goa V/s Establishment of Forum for Redressal of Grievances of Consumers) Regulation, 2009, and the amendments made thereunder.

2. His period of appointment will be of 03 years effective from the date he assumes the duty or till he attains the age of 65 years, whichever is earlier.

3. His headquarter shall be at Vidyut Bhavan, Vasco-Goa.

4. He shall draw a consolidated remuneration of Rs. 65,000/- (Rupees sixty five thousand only) under the Budget Head "2801—Power, 80—General, 800—Other Expenditure. 04—Consumer Grievances Redressal Forum, 01—Salaries (Non Plan)".

5. In case of travel outside headquarters on duty, TA/DA shall be admissible as per entitlement.

6. The appointee shall be liable for removal from office in accordance with the provisions of regulations of CGRF/JERC.

7. He should report to the office of the Consumer Grievances Redressal Forum (CGRF), Vidyut Bhavan, Vasco-Goa by 31-05-2021.

By order and in the name of the Governor of Goa.

Raghuvir G. Keni, Chief Electrical Engineer & ex officio Addl. Secretary.

Panaji, 20th May, 2021.

Department of Public Health

Order

No. 4/14/2002-II/PHD/Vol.I/939

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/30(2)/95/42 dated 06-05-2021, Government is pleased to promote Dr. Anant Sadanand Ramani, Assistant Professor to the post of Associate Professor in the Department of Surgery in Goa Medical College and Hospital, Bambolim on regular basis in the Level 11 of Pay Matrix and other allowances to be fixed as per rules with immediate effect.

The promotion is made against the vacancy occurred due to promotion of Dr. Rajesh Patil, Associate Professor in Surgery, Goa Medical College to the post of Professor in the Department of Surgery, Goa Medical College, Bambolim-Goa vide Order No. 4/14/2002-II/PHD/Vol. I/938 dated 18-05-2021.

By order and in the name of the Governor of Goa.

Trupti B. Manerkar, Under Secretary (Health).

Porvorim, 18th May, 2021.

Order

No. 23/20/2014-I/PHD/Part IV(a)/1097

Government is pleased to constitute the Task Force/Steering Committee for formulation and implementation of a strategy to tackle the possible third wave of COVID-19 pandemic in the State consisting of the following:-

1. Dr. Pramod Sawant, — Chairman.
Chief Minister
2. Shri Vishwajit Rane, — Vice Chairman/
Minister for Health /Member.
3. Shri Parimal Rai, IAS, — Member.
Chief Secretary
4. Shri Sanjay Kumar, IAS, — Member.
Secretary (Revenue)

5. Shri Ravi Dhawan, IAS, — Member.
Secretary (Health)

6. Dr. Jose D'Sa, — Member.
Director of Health Services

7. Dr. Shivanand Bandekar, — Member.
Dean, Goa Medical College

8. Dr. M. P. Silveira, — Member.
HOD-Paediatrics,
Goa Medical College

9. Dr. Utkarsh Betodkar, — Member.
State Epidemiologist,
Directorate of Health Services

10. Dr. Ira Almeida, — Member.
Senior Paediatrician,
North Goa District Hospital

11. Dr. Vinayak Buvaji, — Member.
President, IMA-
-Goa Chapter

12. Dr. Narayan S. Usgaonkar, — Member.
Senior Paediatrician

13. Dr. Shekhar Salkar — Member.

14. Dr. Shivanand Gauns, — Member.
CIAP Executive Member

15. Dr. Jagdish Kakodkar, — Member
HOD-PSM, Goa Medical Secretary.
College

The above Committee shall meet weekly.

By order and in the name of the Governor of Goa.

Vikas S. N. Gaunekar, Additional Secretary (Health).

Porvorim, 21st May, 2021.

Department of Transport

Directorate of Transport

Notification

No. D.Tpt/5/9-2004-Tpt/Part-I/2021/1329

In exercise of the powers conferred by sub-section (2) of Section 89 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) and in supersession of earlier notification No. 5/9/2004-TPT/139 dated 09-09-2005 published in the Official Gazette, Series II No. 25 dated 22-09-2005, the Government of Goa, with the concurrence of High Court Bombay conveyed vide letter No. A. 1239/2021/847 dated

10th May, 2021 hereby constitutes North Goa Transport Appellate Tribunal and South Goa Transport Appellate Tribunal having jurisdiction over North Goa and South Goa Districts respectively and further nominates District and Session Judge North Goa District (Panaji) to preside over North Goa Transport Appellate Tribunal and nominates District and Session Judge South Goa District (Margao) to preside over South Goa Transport Appellate Tribunal, in addition to their duties as District Judges.

By order and in the name of the Governor of Goa.

Rajan Satardekar, Director & ex officio Additional Secretary (Transport).

Panaji, 27th May, 2021.

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Department of Urban Development
(Municipal Administration)

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Order

No. 14/DMA/STAT/IC4CC/2020-21/490

The Government of Goa through Imagine Panaji Smart City Development Limited (IPSCDL) has constituted an Apex Committee for Non-Motorized Transport (NMT) to oversee NMT development in the City. The Committee shall review and monitor the development of a Cycling Plan and NMT Policy for Panaji City.

The composition of the Apex Committee will be as follows:

1. The Secretary (Transport) — Chairman.
2. The Director, Directorate of Transport — Member.
3. The Superintendent of Police, Traffic (North Goa) — Member.

4. The Principal Chief Engineer, PWD — Member.
 5. The Chief Town Planner, Town & Country Planning Department — Member.
 6. The Commissioner, Corporation of the City of Panaji — Member.
 7. The Managing Director, Kadamba Transport Corporation Ltd., Representative of Chairman KTC — Member.
 8. The Chairman, Greater Panaji Planning and Development Authority — Member.
 9. MD & CEO, Imagine Panaji Smart City Development Limited (IPSCDL) — Member-Convener.
- Member, Panaji Urban Living Lab
 - Member of Non-Governmental Organization (NGO)
 - The Chairman, Goa Chamber of Commerce & Industry
 - The Chairman, Youth Hostel's Association of India
 - President, Panaji Municipal Market Tenants Association
- } Special invitees from the area/organization as and when required by IPSCDL

The above order is issued with the approval of the Government vide U.O. No. 1369/F dated 24-02-2021.

By order and in the name of the Governor of Goa.

Gurudas P. Pilarnekar, Director & ex officio Addl. Secretary (Municipal Administration/Urban Development).

Panaji, 26th May, 2021.

Directorate of Municipal Administration/Urban Development

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Notification

No. 10/671/2015-DMA/488

The Government has constituted a Special Purpose Vehicle (SPV) in the name and style of Imagine Panaji Smart City Development Limited (IPSCDL) for operationalizing the Smart City Projects with Board of Directors (BoD) vide Notification No. 10/671/2015-DMA/658 dated 9th June, 2016, Notification No. 10/671/2015-DMA/2170 dated 26th October, 2017, Notification No. 10/671/2015-DMA/3683

dated 08th March, 2019, Notification No. 10/671/2015-DMA/4858 dated 14th October, 2020, Notification No. 10/671/2015-DMA/4830 dated 14th January, 2021, Notification No. 10/671/2015-DMA/5282 dated 16th February, 2021 and Notification No. 10/671/2015-DMA/170 dated 19th April, 2021. The Government of Goa hereby re-constitutes the Board of IPSCDL with ex officio members as per designation given in column (2) in Table A below and non-ex officio members as given in Table B below:

TABLE A

Sr. No.	Designation	Name	IPSCDL Board designation
1	2	3	4
1.	Chief Secretary, Government of Goa	Shri Parimal Rai, IAS	Chairman.
2.	Secretary (Finance), Government of Goa	Shri Puneet Kumar Goel, IAS	Director.
3.	Secretary (Urban Development), Government of Goa	Dr. Tariq Thomas, IAS	Director.
4.	Collector, North Goa	Shri Ajit Roy, IAS	Director.
5.	Director/Addl. Secretary (Urban Development), Government of Goa	Shri Gurudas P. Pilarnekar	Director.
6.	Commissioner, Corporation of the City of Panaji	Shri Agnelo A. J. Fernandes	Director.
7.	Principal Chief Engineer, PWD, Government of Goa	Shri Uttam Parsekar	Director.

TABLE B

Sr. No.	Name	IPSCDL Board designation
1	2	3
1.	Shri Ravi Dhawan, IAS	Managing Director & CEO, IPSCDL.
2.	Shri Naveen Kumar Yadav, Director (Estate-II), Ministry of Housing & Urban Affairs, Government of India	Director.
3.	Shri Antanasio Monserrate, MLA, Panaji Constituency	Director.
4.	Shri Rohit Joe Monserrate, Mayor, Corporation of the City of Panaji	Director.

The Department of Urban Development/Directorate of Municipal Administration will issue notifications reconstituting the board in respect of Ex-Officio Members of the Board as and when there is a change of the incumbents holding the posts and for the other members as per Government order from time to time.

This is issued in supersession of all earlier Notifications issued in this regard.

By order and in the name of the Governor of Goa.

Gurudas P. Pilarnekar, Director & ex officio Addl. Secretary (Municipal Administration/Urban Development).

Panaji, 26th May, 2021.

Department of Water Resources

Order

No. 3/25-15/90/CE-WR/ADM-I/150

On the recommendation of the Goa Public Service Commission as conveyed vide confidential letter No. COM/II/11/27(1)/2018/47 dated 17-05-2021, Government is pleased to order the promotion of the following Assistant Engineers/Assistant Surveyor of Works (Civil) of the Water Resources Department, Government of Goa to the post of Executive Engineers/Surveyor of Works/Engineering Officer (Civil) Group-A Gazetted in Water Resources Department on regular basis in the Pay Scale of Rs. 15,600-39,100 + Grade Pay Rs. 6,600/- (Level-11 of 7th Pay Commission) with immediate effect and post them against the place indicated below:-

Sr. No.	Name of the Officer	Present designation and place of posting	Designation and new place of posting	Remarks
1	2	3	4	5
1.	Shri Chimeta D. Narayan	Surveyor of Works, on officiating basis in the office of Superintending Engineer, Circle-II, WRD, Karaswada-Goa	Surveyor of Works, O/o Superintending Engineer, Circle-II, WRD, Karaswada, Goa	Regular promotion.
2.	Shri Azad S. Vernekar	Executive Engineer, on officiating basis, O/o Executive Engineer, Works Div-VII, WRD, Dhargal-Goa, on officiating basis	Executive Engineer, O/o Executive Engineer, Works Div.-VII, WRD, Dhargal-Goa	Regular promotion.
3.	Shri Ghantkar Shantaram B.	Surveyor of Works, O/o Superintending Engineer, Central Planning Organisation, WRD, Porvorim-Goa on officiating basis with additional charge of Engineering Officer, O/o Chief Engineer, WRD, Porvorim-Goa	Engineering Officer, O/o Chief Engineer, WRD, Porvorim-Goa with additional charge of Surveyor Works, O/o Superintending Engineer, Central Planning Organisation, WRD, Porvorim-Goa	Regular promotion.

The above Officers shall be on probation for a period of two years from the date of joining as specified in Column No. 9 of the Recruitment Rules notified in the Official Gazette, Extraordinary, Series I No. 28 dated 11-10-2001.

This is issued vide Government approval No. 3016/F dated 20-05-2021.

By order and in the name of the Governor of Goa.

Sd/-, Chief Engineer & ex officio Addl. Secretary (WR).

Porvorim, 21st May, 2021.

Order

No. 3/25-15/90/CE-WR/ADM-I/151

On the recommendation of the Goa Public Service Commission as conveyed vide confidential letter No. COM/II/11/27(3)/2020/48 dated 17-05-2021, Government is pleased to order the promotion of the following Junior Engineer (Mechanical/Electrical), Water Resources Department, Government of Goa to

the post of Assistant Engineer/Assistant Surveyor of Works (Mechanical/Electrical), Group-B Gazetted in Water Resources Department on regular basis in the Pay Scale of Rs. 9,300-34,800 + Grade Pay Rs. 4,600/- (Level 7 as per 7th Pay Commission) with immediate effect and post him against the place indicated below:-

Sr. No.	Name of the Officer	Present designation and place of posting	Designation and new place of posting	Remarks
1	2	3	4	5
1.	Shri Sawant Anil P.	Junior Engineer (Mechanical), Sub-Division-III, Works Division-II, WRD, Ponda-Goa	Assistant Engineer, O/o Assistant Engineer, Sub-Division III, WD XIII, Margao-Goa	Regular promotion.

The above Officer shall be on probation for a period of two years from the date of joining as specified in Column No. 9 of the Recruitment Rules notified in the Official Gazette, Extraordinary, Series I No. 28 dated 11-10-2001.

This is issued vide Government approval No. 3015/F dated 20-05-2021.

By order and in the name of the Governor of Goa.

Sd/-, Chief Engineer & ex officio Addl. Secretary (WR).

Porvorim, 21st May, 2021.

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